MONTANA LEGISLATIVE HISTORY

Chapter 549 1997

Bill H 578 S _____ Original bill & history ✓ C

H. Committee on Approp.

Hearing Date(s) 3/10 ___C
3/14 ___C
_____ ___C
_____ ___C

Date Out _____ ___C

S. Committee on Finance & Claims

Hearing Date(s) 4/09 ___C
4/11 ___C
_____ ___C
_____ ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Free Conference Comm.

h 4/19 ✓

h 4/21

R 4/23 ✓

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

3/22	3RD READING PASSED	82	16
	TRANSMITTED TO SENATE		
3/24	FIRST READING		
3/24	REFERRED TO FINANCE & CLAIMS		
4/09	HEARING		
4/09	COMMITTEE REPORT—BILL CONCURRED		
4/11	2ND READING CONCURRED	49	1
4/12	3RD READING CONCURRED	47	1
	RETURNED TO HOUSE		
4/15	SIGNED BY SPEAKER		
4/17	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 405		
	EFFECTIVE DATE: 07/01/97		

HB 577 INTRODUCED BY MOLNAR, ET AL. *LC1409 DRAFTER: MACMASTER*

DELETE THE PROVISION THAT A PERSON UNDER 21 YEARS OF AGE NEED NOT BE CONSUMING OR IN POSSESSION OF THE INTOXICATING SUBSTANCE AT THE TIME OF ARREST TO COMMIT THE OFFENSE OF POSSESSION OF AN INTOXICATING SUBSTANCE

BY REQUEST OF HOUSE JUDICIARY COMMITTEE

2/18	INTRODUCED		
2/18	FIRST READING		
2/18	REFERRED TO JUDICIARY		
2/19	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED		
2/24	2ND READING PASSED	92	8
2/26	3RD READING PASSED	93	6
	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO JUDICIARY		
3/14	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/19	2ND READING CONCURRED	50	0
3/20	3RD READING CONCURRED	45	5
	RETURNED TO HOUSE		
3/26	SIGNED BY SPEAKER		
3/26	SIGNED BY PRESIDENT		
3/27	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 182		
	EFFECTIVE DATE: 04/01/97		

HB 578 INTRODUCED BY R. JOHNSON *LC1397 DRAFTER: PETESCH*

ELIMINATE THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT IN 1999

2/17	FISCAL NOTE REQUESTED		
2/18	INTRODUCED		
2/18	FIRST READING		
2/18	REFERRED TO APPROPRIATIONS		
2/21	FISCAL NOTE RECEIVED		
2/21	FISCAL NOTE PRINTED		
3/10	HEARING		
3/15	COMMITTEE REPORT—BILL PASSED		
3/20	2ND READING PASSED	68	32
3/27	3RD READING PASSED	65	35

	TRANSMITTED TO SENATE		
3/28	FIRST READING		
3/28	REFERRED TO FINANCE & CLAIMS		
4/09	HEARING		
4/11	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/14	2ND READING CONCURRED	50	0
4/15	3RD READING CONCURRED	47	3
	RETURNED TO HOUSE WITH AMENDMENTS		
4/16	2ND READING AMENDMENTS NOT CONCURRED	97	2
4/16	FREE CONFERENCE COMMITTEE APPOINTED		
4/19	HEARING		
4/21	HEARING		
4/23	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/23	ON MOTION RULES SUSPENDED TO PLACE FREE CONFERENCE COMMITTEE REPORT ON 2ND READING THIS DAY		
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	62	38
4/23	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	65	34
	SENATE		
4/17	FREE CONFERENCE COMMITTEE APPOINTED		
4/23	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
4/23	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
4/30	SIGNED BY SPEAKER		
5/02	SIGNED BY PRESIDENT		
5/02	TRANSMITTED TO GOVERNOR		
5/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 549		
	EFFECTIVE DATE: 05/07/97—SECTIONS 1, 6(5), 7 & 16		
	EFFECTIVE DATE: 07/01/99—SECTIONS 2-5, 6(1-4) & 8-15		

HB 579 INTRODUCED BY KITZENBERG, ET AL. *LC0477 DRAFTER: PETESCH*

REVISE THE ETHICS LAWS

1/07	FISCAL NOTE REQUESTED		
2/18	INTRODUCED		
2/18	FIRST READING		
2/18	REFERRED TO STATE ADMINISTRATION		
2/19	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING PASSED	59	40
2/26	3RD READING PASSED	62	38
	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO STATE ADMINISTRATION		
3/26	HEARING		
3/27	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

HB 580 INTRODUCED BY MCCANN, ET AL. *LC1398 DRAFTER: PETESCH*

REQUIRE AGENCY PROGRAM BUDGETS TO CONTAIN A PLAN TO REDUCE BASE BUDGETS BY 100 PERCENT

BY REQUEST OF HOUSE APPROPRIATIONS COMMITTEE

2/17 FISCAL NOTE REQUESTED

HOUSE APPROPRIATIONS

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ------- REREFERRED ---- DATE READ

HB0557	SMITH, LIZ		STATE ADMIN. COSTS: COMPILATION, ANALYSIS, REPORTING REQUIRED			
	2/14	3/10		TABLED ON 03/11	VOTE:	
HB0567	SQUIRES, CAROLYN		REVISE EMPLOYEE PROTECTION ACT ELIGIBILITY AND FUNDING			
	2/15	3/10		PASS AS AMENDED 3/24	VOTE: 14-4	3/25
HB0574	SMITH, LIZ		CONSTRUCT ADDITIONAL PRISON ADJACENT TO MSP			
	2/17	3/10		TABLED ON 03/11	VOTE:	
HB0576	COBB, JOHN		ENDOWMENT FOR CHILDREN			
	2/17	3/10		PASS AS AMENDED 3/11	VOTE: 13-5	3/12
HB0578	JOHNSON, ROYAL		ELIMINATE BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT IN 1999			
	2/18	3/10		DO PASS 3/14	VOTE: 12-3	3/15
HB0580	MCCANN, MATT		REQUIRE AGENCY PROGRAM BUDGET TO CONTAIN PLAN TO REDUCE BASE BUDGETS BY 100%			
	2/18	3/10		DO PASS 3/11	VOTE: 18-0	3/12
HB0581	CAREY, BILL		HOUSING TRUST FUND			
	2/19	3/11		TABLED ON 03/21	VOTE:	
HB0583	SANDS, DIANE		CREATE HOUSING TRUST FUND & APPROPRIATION TO BD. OF HOUSING FOR TRUST FUND			
	2/19	3/11		TABLED ON 03/21	VOTE:	
HB0584	KNOX, DICK		CREATING AN ORPHAN SHARE SPECIAL REVENUE ACCOUNT			
	2/19	3/11		PASS AS AMENDED 3/24	VOTE: 13-5	3/25
HB0588	TAYLOR, LILA		APPROPRIATION TO COAL BOARD FOR RECONSTRUCTION OF MT HIGHWAY 314			
	2/21			TABLED ON 03/21	VOTE:	
HB0593	PAVLOVICH, BOB		APPROPRIATE COAL TAX MONEY TO FUND THE NATIONAL GUARD SCHOLARSHIP PROGRAM			
	2/24	3/13		TABLED ON 03/21	VOTE:	
HB0594	DEBRUYCKER, ROGER		ELIMINATE BOARD OF PASSENGER TRAMWAY SAFETY AND ASSOCIATED LAWS			
	2/25	3/13		DO PASS 3/21	VOTE: 18-0	3/21

House BILL NO. 578

INTRODUCED BY [illegible]

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE BOARD OF INVESTMENTS; REVISING THE JOB INVESTMENT LOAN LAWS; APPROPRIATING COAL SEVERANCE TAX PERMANENT FUNDS TO THE OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION TO REPAY THE RESEARCH AND DEVELOPMENT LOAN; PROVIDING FOR THE DEPOSIT OF THE LOAN REPAYMENT; AMENDING SECTIONS 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, AND 90-3-901, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-18-103, MCA, is amended to read:

"**2-18-103. Officers and employees excepted.** (1) Parts 1 and 2 do not apply to the following positions in state government:

(a) elected officials;

(b) county assessors and their chief deputy;

(c) employees of the office of consumer counsel;

(d) judges and employees of the judicial branch;

(e) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(f) officers or members of the militia;

(g) agency heads appointed by the governor;

(h) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(i) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(j) teachers under the authority of the department of corrections or the department of public health and human services;

(k) investment officer, assistant investment officer, executive director, and ~~three~~ five professional staff positions of the board of investments;

(l) four professional staff positions under the board of oil and gas conservation;

(m) assistant director for security of the Montana state lottery;

~~(n) executive director and senior investment officer of the Montana board of science and technology development;~~

~~(o)~~(n) executive director and employees of the state compensation insurance fund;

~~(p)~~(o) state racing stewards employed by the executive secretary of the Montana board of horseracing;

~~(q)~~(p) executive director of the Montana wheat and barley committee;

~~(r)~~(q) commissioner of banking and financial institutions; and

~~(s)~~(r) training coordinator for county attorneys.

(2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative branch, other than the office of consumer counsel:

(a) as used in parts 1 through 3 of this chapter, references to the "department of administration" or "department" apply to the legislative council established by 5-11-101, which may delegate administrative duties to the legislative services division established by 5-11-111;

(b) as used in 2-18-102, the term "governor" applies to the legislature; and

(c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined in 17-7-102."

Section 2. Section 17-6-201, MCA, is amended to read:

"**17-6-201. Unified investment program -- general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be

administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

~~(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.~~"

Section 3. Section 17-6-302, MCA, is amended to read:

"**17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Department" means the department of commerce provided for in 2-15-1801.

~~(4)~~(5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

~~(5)~~(6) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

~~(6)~~(7) "Loan participation" means loans or portions ~~thereof~~ of loans bought from a financial institution and does not include the purchase of debentures issued by a capital company.

~~(7)~~(8) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests ~~are~~ is owned and controlled by residents of Montana.

~~(8)~~(9) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax ~~revenues~~ revenue in the future to the people of Montana, either directly or indirectly.

~~(9)~~(10) "Montana economy" means any business activity in the state of Montana, including those ~~which~~ that continue existing jobs or create new jobs in Montana.

~~(10)~~(11) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 4. Section 17-6-305, MCA, is amended to read:

"**17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy -- report by board.** (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25% of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of

the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of science and technology development and administered by the department pursuant to ~~17-6-308(3)~~ part 5 of this chapter ~~may~~ is not ~~be~~ included in the 25% of the trust fund allocated to the board for in-state investment under this section.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by 17-7-111."

Section 5. Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall ~~allow~~ manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development~~, provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. This authority does not extend beyond June 30, 1997, for seed capital project loans and beyond June 30, 1997, for research and development projects~~. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios. Until the ~~Montana board of science and technology development~~ department makes a loan pursuant to the provisions of ~~Title 90,~~ part 5 of this chapter ~~3~~, the $2 million in

funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As ~~seed capital and mezzanine financing~~ loans made pursuant to part 5 of this ~~subsection~~ chapter are repaid, the ~~Montana board of science and technology development~~ department may reinvest the principal in new loans pursuant to part 5 of this chapter.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations."

Section 6. Section 17-6-503, MCA, is amended to read:

"**17-6-503. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

~~(1) "Board" means the Montana board of science and technology development provided for in 2-15-1818.~~

~~(2)~~(1) "Department" means the department of commerce provided for in 2-15-1801.

(2) "Job investment administrative account" means the account established in 17-6-509.

(3) "Job investment loan account" means the account established in [section 7].

~~(3)~~(4) "Loan review committee" means the committee that is established by the department to consider economic development loan applications for funding by the federal community development block grant program and that is responsible for reviewing and recommending to the ~~board~~ department the approval or denial of job investment loans subject to this part and rules implementing this part.

~~(4)~~(5) "Qualified business" means a business enterprise that either is or will be located in the state and that produces goods or provides services that will, as a result of receiving a job investment loan, create jobs for Montana workers."

NEW SECTION. **Section 7. Job investment loan account.** There is a job investment loan account. The department shall deposit all principal payments on loans made pursuant to this part in the account and may make additional loans pursuant to this part. The department shall make loans from the funds allocated to the department under 17-6-308.

Section 8. Section 17-6-509, MCA, is amended to read:

"**17-6-509. Job investment administrative account.** There is a job investment administrative account in the state special revenue fund. The department shall deposit up to 20% of interest payments on job investment loans into the account. Money in the account must be used to pay the costs of administering this part, including personnel costs, operating costs, and administrative costs. Interest payments not deposited into the account must be deposited into the coal severance tax income fund established in 17-5-703."

Section 9. Section 17-6-510, MCA, is amended to read:

"**17-6-510. Loan review committee -- conflict of interest -- servicing of loans.** (1) The department shall establish a loan review committee to administer this part. The committee shall accept and review loan applications pursuant to rules adopted by the department. The committee shall recommend to the ~~board~~ department the approval or disapproval of loans. A loan may not exceed $500,000.

(2) If a member of the committee has a financial interest in a business that submits a job investment loan application, then the application must be denied.

(3) The department ~~shall~~ may contract for the servicing of loans.

(4) The department is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into under this part."

Section 10. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;

16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; ~~90-3-301;~~ 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

Section 11. Section 90-8-201, MCA, is amended to read:

"**90-8-201. Certification of Montana capital companies -- certification of a Montana small business investment capital company.** (1) The department shall certify one Montana small business investment capital company, and from time to time, the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company or as the Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that ~~such~~ the investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company or as the qualified Montana small business investment capital company.

(5) To be eligible for certification under this section as the Montana small business investment capital company, the applicant shall commit to:

(a) ~~utilize~~ using the tax credits to accumulate private capital~~,~~ with the intention of being designated a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

(b) ~~target~~ targeting its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and development, ~~the Montana board of science and technology development (second stage),~~ small business incubators, community development block grant programs, and projects emerging from economic development programs of Montana certified communities, with the objective of providing significant investment opportunities in an area where economic development capital is limited;

(c) ~~consider~~ considering investment opportunities originating in any Montana county; and

(d) ~~adopt~~ adopting investment guidelines that ensure that not less than 10% of its available capital is invested in counties with populations of 20,000 or less."

NEW SECTION. **Section 12. Appropriation -- loan repayment.** There is appropriated to the office of the commissioner of higher education from the coal severance tax permanent trust fund up to $9,350,000 for the purpose of repaying the research and development loan made by the Montana board of science and technology development to the university system. The appropriation must be used to repay the loan principal to the board of investments as the successor in interest to the Montana board of science and technology development. The repayment must be deposited in the coal severance tax permanent fund. The principal must be repaid within 30 days after [the effective date of this act].

NEW SECTION. **Section 13. Repealer.** Sections 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, and 90-3-901, MCA, are repealed.

NEW SECTION. **Section 14. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 15. Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 17, chapter 6, part 5, and the provisions of Title 17, chapter 6, part 5, apply to [section 7].

NEW SECTION. **Section 16. Three-fourths vote required.** Because [section 12] statutorily appropriates money from the coal severance tax trust fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage of [section 12]. If a vote of three-fourths of the members of each house is not received, then [section 12] is void.

NEW SECTION. **Section 17. Effective date.** [This act] is effective July 1, 1997.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0578, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
A bill for an act eliminating the Montana Board of Science and Technology Development; transferring the portfolios to the Montana Board of Investments; revising the Job Investment Loan laws; appropriating coal severance tax permanent funds to the Commissioner of Higher Education to repay the research and development loan.

ASSUMPTIONS:
Department of Commerce:

1. All Montana Board of Science and Technology (MST) administrative expenditures will be eliminated. Three FTE will be eliminated. An FTE will be transferred to the Board of Investments (BOI) to monitor and evaluate the investment portfolios and 1.00 FTE has already been transferred to the Economic Development Division to staff a new federal grant. The Economic Development Division FTE will be supported with federal funds already included in the Executive Budget for the 1999 biennium.
2. BOI operational expenditures will increase slightly to accommodate the management and evaluation of the transferred investment portfolios. The Economic Development Division will assume administration of the Jobs Investment Loan (JIL) program with the appropriation requested by MST in the Executive Budget.
3. The MST state special revenue accounting entity 02121 is funded by interest earned on seed capital and research and development loan portfolios. Once this account is eliminated, all of the interest earned on these portfolios will be deposited in the state general fund. The Economic Development Division will retain the JIL state special revenue accounting entity 02353 for loan servicing requirements.
4. The BOI utilizes a cost allocation system to charge accounts it invests based on personal service costs and identifiable operational costs attributed to the account. The charges are netted against the income earned by the account and deposited in an internal service account that funds the BOI investment operations. Because the interest earned by the MST loan portfolios transferred to the BOI accrues to the state general fund, the BOI costs for managing and evaluating the portfolios would be charged against this state general fund interest income.
5. If a three-fourths vote is obtained, upon payment of the Montana University System loans, the interest earnings on coal severance tax permanent trust fund would create a general fund would loss $19,095 in fiscal year 1998 and $20,100 in fiscal year 1999.

Commissioner of Higher Education:

6. The current research and loan balance is $9,350,000. Section 12 of the proposed legislation appropriates $9,350,000 to the Commissioner of Higher Education for the purpose of repaying the research and development loan. The required loan payment in fiscal year 1997 is $270,000 of which $156,600 is interest and $113,400 is principle. This payment has not been made by the Montana University System.
7. The repayment of the research and development loan is prorated to Montana State University Bozeman (MSU), University of Montana Missoula (UM), and Montana Tech based upon the total of research and development expenses. The fiscal year 1996 loan payment of $250,000 amounted to $157,500 for MSU Bozeman $76,750 for UM Missoula, and $15,570 for Montana Tech.
8. Loan repayments have primarily come from indirect cost recoveries on grants from federal and private sources.

FISCAL IMPACT:

Science & Technology Expenditures:	FY98 Difference	FY99 Difference
FTE	(5.00)	(5.00)
Personal Services	(224,891)	(225,176)
Operating Expenses	(119,025)	(118,335)
Debt Service	(11,892)	(15,648)
Total	(355,808)	(359,159)

(Continued)

Dave Lewis 2-21-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

ROYAL JOHNSON, PRIMARY SPONSOR DATE

	FY98	FY99
Board of Investments (06)	Difference	Difference
FTE	1.00	1.00
Personal Services	51,319	51,319
Operating Expenses	23,000	23,000
Total	74,319	74,319
Economic Development (02)		
FTE	1.00	1.00
Operating Expenses	764	764
Debt Service	11,892	15,648
Total	12,656	16,412
Revenues:		
Economic Dev. JIL Interest	12,656	16,412
Commissioner of Higher Education:		
Expenditures:		
MUS Loan Repayments	(285,000)	(300,000)
Revenues:		
Designated Funds (33)	285,000	300,000
Net Impact:		
FTE	(3.00)	(3.00)
General Fund	262,394	264,740

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
There will be no more seed capital or research and development loans made. When these loans are repaid, the principal will be deposited in the trust where it will be invested by BOI in the same manner it currently invests trust principal. Investment earnings to the state general fund will increase commensurate with any reduction in expenditures resulting from the enactment of this bill.

If the university system repays its research and development loans with an appropriation from the trust, rather than its own funding sources, the trust's principal will be reduced by the amount of the Trust appropriation used to repay the loans.

TECHNICAL NOTES:
Because Section 12 appropriates funds from the trust, that section requires a three-fourths vote of each house. All other sections of the bill require a simple majority vote.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 10, 1997, at 8:00 a.m., in Room 312-2.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Edward J. "Ed" Grady, Vice Chairman (Majority) (R)
Rep. Joe Quilici, Vice Chairman (Minority) (D)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. John Cobb (R)
Rep. Roger DeBruycker (R)
Rep. Gary Feland (R)
Rep. Don Holland (R)
Rep. John Johnson (D)
Rep. Royal C. Johnson (R)
Rep. Betty Lou Kasten (R)
Rep. Bob Keenan (R)
Rep. Matt McCann (D)
Rep. William T. "Red" Menahan (D)
Rep. Ray Peck (D)
Rep. Steve Vick (R)
Rep. William R. Wiseman (R)

Members Excused: None.

Members Absent: None.

Staff Present: Clayton Schenck, Legislative Fiscal Analyst
Marjorie Peterson, Committee Secretary

Committee Business Summary:

Hearing: HB 391, HB 499, HB 511, HB 567, HB 580, HB 557, HB 574, HB 576, HB 578
Executive Action: None.

HEARING ON HB 391

Opening Statement by Sponsor:
REP. SAM ROSE, HD 87, Choteau, opened the hearing on HB 391, An act implementing the one-stop business licensing pilot project. ***{Tape: 1; Side: A; Approx. Tape Counter: 0.1.}***

Bob Torres, Montana Chapter National Association of Social Workers.
{Tape: 4; Side: A; Approx. Tape Counter: 14.6.}

Opponents:
None.

Questions From the Committee:
{Tape: 4; Side: A; Approx. Tape Counter: 15.3.}

Closing by Sponsor:
REP. COBB closed the hearing on HB 576.
{Tape: 4; Side: A; Approx. Tape Counter: 16.3.}

HEARING ON HB 578

Opening Statement by Sponsor:
REP. ROYAL JOHNSON, HD 10, Billings, opened the hearing on HB 578, An act eliminating the Montana Board of Science and Technology Development.
{Tape: 4; Side: A; Approx. Tape Counter: 16.9.}

Proponents:
Peter Blouke, Director, Department of Commerce, Helena.
{Tape: 4; Side: A; Approx. Tape Counter: 27.0.}

Informational:
Richard Crofts, Commissioner of Higher Education, Helena.
{Tape: 4; Side: A; Approx. Tape Counter: 34.7.}

Opponents:
Rebecca Maharin, Chair, Montana Board of Science and Technology. Ms. Maharin submitted her written testimony, six letters in opposition to HB 578, and the Montana Science and Technology Alliance 1997 Biennial Report. **EXHIBITS 10, 11, 12.**
{Tape: 4; Side: A; Approx. Tape Counter: 38.7.}

Will Brooke, Montana Board of Science and Technology, Bozeman.
{Tape: 4; Side: A; Approx. Tape Counter: 44.6.}

Jon Marchi, farming operation, Polson. Mr. Marchi submitted his written testimony. **EXHIBIT 13.**
{Tape: 4; Side: B; Approx. Tape Counter: 3.0.}

Jerry Spencer, Keep It Simple Systems, Helena.
{Tape: 4; Side: B; Approx. Tape Counter: 9.2.}

Monte Giese, D. A. Davidson Co., Great Falls.
{Tape: 4; Side: B; Approx. Tape Counter: 14.1.}

Alan Nicholson, Realtor, Helena.
{Tape: 4; Side: B; Approx. Tape Counter: 17.6.}

Bob Kearns, MicoTech, Butte.
{Tape: 4; Side: B; Approx. Tape Counter: 22.6.}

Dolph Harris, Montana Board of Science and Technology, Sidney.
{Tape: 4; Side: B; Approx. Tape Counter: 31.9.}

Loren Smith, Montana Board of Science and Technology, Great Falls.
{Tape: 4; Side: B; Approx. Tape Counter: 35.8.}

Questions From the Committee:
None.

Closing by Sponsor:
REP. ROYAL JOHNSON closed the hearing on HB 578.
{Tape: 5; Side: A; Approx. Tape Counter: 0.1.}

EXHIBIT 10
DATE 3/10/97
HB 578

Rebecca W. Makurin
5 West Cleveland
Bozeman, MT 59715

March 10, 1997

Representative Tom Zook, Chair
House Appropriations Committee
Montana Legislature
Helena, MT 59620

Dear Representative Zook:

Thank you for allowing me the opportunity to share with you and your committee the success of the Montana Science and Technology Alliance.

MSTA was created in the 1985 to provide for venture capital and early stage financing for technology-based companies and for research and development projects with commercialization potential. Both activities were aimed at diversifying the state's economy into the high technology field. Over $23 million dollars from the Permanent Coal Tax Trust have been invested in these activities.

After considerable effort by the staff and Board of MSTA, MSTA now self-funds its administration, has a revolving fund from loan repayment which it can reinvest, and has the following statistics of which it is proud.

Research and development program has provided for:

Jobs created	**247**
Leveraged Funds	**$115.4 mill**
Mt Private Capital Network Funds Placed	**$ 1.05 mill**
Mt Business Connections Clients Served	**5,500**
Collaborative Projects - MUS and MT Businesses	**31**
Centers of Excellence (work with businesses)	**5**
Medical Research Institutions supported - 2	**$ 3.0 mill**

Seed Capital Program has provided for:

Technology Based Businesses	**14**
Private Venture Capital Partnerships	**2**
Mezzanine Companies	**3**
Jobs	**275**
Wages	**$27 mill**
Leveraged Funds	**$149 mill**

A few specific examples of our success are:

1) Ultrafem in Missoula is now publicly traded at almost four times MSTA's purchase price. The company has over 100 employees in Missoula and looks to expand. They say they would not have located in Montana but for the MSTA investment.

2) Mycotech, Inc. In Butte recently closed a $7 million private placement of out-of-state money. They say they would not have stayed in Montana but for the MSTA investment. **Last week MSTA sold one third of our shares in Mycotech and recouped almost our entire investment.**

3) Life Resonances, and R&D investment, recently paid the entire balance of it loan, plus it will continue to pay royalties for 10 years. This "bone healing" technology emanated at MSU and is now providing for better lives for thousands of patients.

4) MSU's taxol technology, supported by MSTA R&D funds, is licensed and may soon provide for a less expensive alternative to the taxol currently on the market. This drug is currently the most effective treatment for breast and ovarian cancer.

In short, MSTA has created over 500 jobs, funded two private venture capital companies, self-funds its administration has leveraged over $264 million and will completely pay back the investment the State made in this effort.

We ask that the sunset date for MSTA be extended until June 30, 1999. We ask for no additional money as we still have over $2 million under authority and our revolving fund is very healthy.

It will soon be appropriate to sunset this organization, and that's what we, the staff and Board, are working toward. Please, lets not prematurely dismantle this effective program.

Respectfully,

Rebecca W. Mahurin, Chair

Rebecca W. Mahurin, Chair
Montana Science and Technology Alliance

EXHIBIT 11
DATE 3/10/97
HB 578

KISS
Keep It Simple Systems

32 South Ewing • Suite 330
Helena, Montana 59601, USA
(406) 442-3434 • Fax (406) 457-0460
e-mail: solarinfo@wildwestweb.com
online: http://wildwestweb.com/

November 26, 199

Governor Marc Racicot
State Capital Building
Helena, MT 59620-0801

Dear Mr. Racicot,

I write to you regarding the **Montana Science & Technology Alliance**, and the future of that organization. As you may know, we received an injection of capital from MSTA in May of this year. The staff at MSTA has been extremely helpful in a number of ways — they have helped us find other investment sources, coached us on good ways to approach such sources, and given us valuable input on the structuring of the company and preparation of our business plan. Dave Desch and Anne Welz have been ever present, and ever helpful in all aspects of their jobs, and their advice to us. These are valuable people that the State of Montana should try to keep in some type of economic development roll, regardless of MSTA's fate.

That infusion of working capital has allowed us to further develop our products, gain additional distribution and sales opportunities, and hire up to 5 new employees. In short, the monies brought in to our company from the Science & Technology Alliance helped tremendously in keeping us afloat, and expanding our business.

I feel that the state of economic development in Montana is less than optimal, and that the state should consider revising the MSTA program and continuing it in some fashion. It will be very hard for Montana to move away from an extraction based economy if we do not provide some sort of high-risk, venture capital type funding sources for other small businesses like ours.

Although MSTA currently operates under very demanding terms, the concept of it's mission is valid and should be continued in some fashion. In today's economy, it is darn near impossible for small, technology based, companies to get a foothold without some alternative to bank funding being available.

I would recommend that your staff take a good hard look at the MSTA program, and what alternatives would be left for companies such as ours should MSTA be cancelled. It's already a herculean task to start a small company in Montana, please don't take away our only source of "speculative" funiding!

Best regards, and wishes for many sunny days

Jerry Spencer
President/Marketing Director

Gateway Software Corporation

November 22, 1996

Governor Marc Racicot
P.O. Box 200801
Helena, MT 59620

Governor Racicot:

Recently, the Governor's Office announced its intentions to sponsor legislation that will dissolve the Montana Science and Technology Alliance (MSTA) as of July 1, 1997. As president of a Montana software company that owes its existence to the MSTA, I am writing this letter to urge you to reconsider this decision.

When Gateway Software Corporation was founded in 1989, venture capital was difficult to secure. The MSTA stepped in with vital seed money in 1990, a time when private investors were reluctant to back a start-up technology firm. With the MSTA's backing at this vital stage, Gateway Software Corporation was able to establish itself in the marketplace. Today, our company employs 17 full-time employees in the small town of Fromberg. Revenues are higher than ever before, and we are looking forward to success in the 21st century.

With the current economic climate, it is essential that state government continue to support the creation of high technology jobs in Montana. As the logging and mining industries continue to decline, technology firms offer the promise of high-paying jobs to the next generation of Montanans. If it is true that the greatest asset of Montana is its people, then surely it is our responsibility to create jobs that will allow native Montanans to remain in the state.

The MSTA has played an integral role in the creation of technology firms in Montana. To dissolve the Alliance now is certainly not in the best interest of the people of our great state.

Sincerely,

Richard A. Brown
President
Gateway Software Corporation

P.O. Box 367 / 10 S. Montana / Fromberg, MT 59029-0367 / (406) 668-7661 / FAX (406) 668-7665 / (800) 735-3637

11/26/96

NURTURE, Inc.
The GREEN Chemistry Company

5840 Expressway
Missoula, Montana 59802
TEL (406) 728-0260
FAX (406) 728-0261

November 25, 1996

Governor Marc Racicot
P.O. Box 200801
Helena, MT 59620

Dear Marc:

It is my understanding that you are likely to support legislation which would effectively dissolve the Montana Science & Technology Alliance ("MSTA"). This is apparently driven by the belief that venture funding is best left to the private sector. Although Nurture has been a beneficiary of the MSTA program, I would have to say that, *philosophically*, I tend to share the same belief.

Pragmatically, though, I have evolved toward a different view. Quite simply, Nurture would never have survived without the support of MSTA. Montana is a difficult environment in which to raise investment capital, largely because it does not lie within a traditional geographic territory for the mainstream investment community. Working with MSTA, we were initially able to develop the company's technology and prospects to a point where we could finally attract the major investment capital required to launch manufacturing and sales. Had it not been for the shepherding of MSTA, we would never have survived the early, vulnerable stage of our development.

I suspect that the Montana Private Capital Network and the two in-state venture funds are likely to be much less effective than MSTA. Unless there have been changes which I am unaware of, the in-state funds are somewhat capital constrained. And, our experience with the Network was frustrating at best. (Perhaps, though, it has improved since its inception.)

Although Nurture has not yet become a well-established business, along the way we have received the benefit of approximately $15 million in investment capital, most of which came from out-of-state and most of which was expended in-state (with attendant economic multipliers for the state). This would not have occurred in the absence of the MSTA program.

To sum up, in the real world of attempting to build a grass-roots business in Montana, government sponsorship of seed capital is virtually essential. No doubt this is why so many other states have programs comparable to MSTA. For less-populated states, I suspect it is even more critical to maintain such a program.

I would be glad to discuss this matter more fully at your convenience.

Sincerely,

Dick Potter

Richard C. Potter, Ph.D.
Executive Vice President

MSE, Inc.
220 North Alaska
P.O. Box 4078
Butte, MT 59702
(406) 782-0463
FAX (406) 723-8328

November 29, 1996

The Honorable Marc Racicot
Governor of Montana
c/o Dr. Rebecca Mahurin, MSTA
Capitol Station
Helena, MT 59620

Dear Governor Racicot:

I am writing to express a few thoughts in regard to financing for technology development in Montana in general, and specifically in relation to the Montana Science and Technology Alliance (MSTA). First of all, I would like to again express my appreciation for your confidence in appointing to me to your Task Force on Research and Development. While I recognize that the subject matter of the Task Force and the discussion about MSTA are not intended to be directly related, it seems that there are some significant common considerations.

First of all, let me point out that I believe support for our research institutions is critical, especially as it is necessary to leverage significant federal commitments to Montana; we must find the resources to keep Montana on the playing field in relation to national research priorities. I should also say, however, that I think we would be remiss to ignore the possible connection between research funding and potential benefit to the state's technology-based commercial economy. When the MSTA was first established in the mid 1980's, research financing was its top priority. Over the years it has been the vehicle through which the state channelled funds to worthy projects such as the McLaughlin Research Institute in Great Falls, the Deaconess Research Institute in Billings, the Center for Biofilm Engineering at MSU in Bozeman, and to the smaller scale Centers of Excellence in the university system.

However, in the early days of the program, MSTA's board members and staff were motivated to suggest the establishment of the Seed Capital financing program because there was perceived to be significant demand from the private sector for "venture capital" to finance technology commercialization, and because Montana needed to match similar programs offered by other states. Through this time, we all became convinced that the two types of programs, research funding and commercial technology development financing, should be interrelated in a coordinated program with generally common goals. Since then, state government has apparently become convinced that, because little investment activity has been completed under the Seed Capital program, there is no need for it.

DEC 02 '96 16:40 T-078 P-002 MSE INC 4067238328

I cannot agree with the above conclusion. First of all, if there is a lack of investment activity, it could be the result of a number of factors, both external and internal to the program itself. Second, if we have concluded that the state of Montana cannot produce opportunities worthy of investment, it does not seem that our first response should be to abandon the effort. Science and technology-based entrepreneurial development is absolutely critical to Montana's development and state government can play a positive role in advancing our chances for long term success. If there are problems with the program, we should first evaluate them and determine if a solution is within our reach. If there are opportunities to coordinate research and development financing with state sponsored seed capital, and with the investments the state has made in private venture capital companies (including employee pension funds), then we should discuss the opportunities.

From the perspective of my company and the other developing science-based commercial enterprises in Montana, this is not the time to allow our hard won momentum to be lost. MSE and its affiliates need access to responsible risk capital - so do other Montana businesses. I do not believe our investment climate is sufficiently mature for us to be satisfied with our current status.

I hope that you and your advisors will give serious consideration to the views of those of us who would like to maintain Montana's commitment to both sides of our state's science-based future. I would be delighted to continue this discussion with you in whatever capacity you think best.

Sincerely,

Don Peoples

Donald R. Peoples
President and CEO

MYCOTECH
CORPORATION

December 3, 1996

Marc Racicot
Governor of the State of Montana
Helena, Montana 59620

Dear Governor Racicot:

Promoting economic growth is challenging state and city administrations all over the United States. The recent success Mycotech has enjoyed has generated numerous inquires and overtures from various city and state agencies charged with promoting economic growth in their area.

In 1991, when Mycotech was first starting, any sort of funding was difficult to find. Ultimately with the help of MSTA, we were successful in attracting venture capital. We have raised over $16 million in venture funding since 1991. With that $16 million and several loans, we have registered two insecticide products with the US EPA, have several others in the pipeline, established sales distribution for the products in the United States, are working on registration and distribution outside of the United States, developed a proprietary manufacturing process using agricultural products grown in Montana, and are completing a state-of-the-art manufacturing facility in Butte. (In comparison, it typically takes a chemical company in excess of $100 million and seven years just to register a new chemical insecticide. We have used our money well.)

Today Mycotech is poised on the brink of dynamic growth. Our products will be made in Montana but sold all over the world. However, we would not be in Montana at all if not for MSTA. The first venture capital firms interested in Mycotech, wanted to move the Company closer to their operations. MSTA's investment and presence close to Mycotech provided the comfort level necessary for the other venture investors to leave the Company in Montana. (Potential new investors continue to ask why we are located in Montana and would we consider moving.)

Venture investors know start-ups, particularly technology based start-ups, frequently need business and managerial help, sometimes on a daily basis. Having the business close to the venture firm allows investors the frequent contact to provide necessary help and/or oversight and maybe more importantly, increases the overall comfort level of the investor. (Many venture firms have geographical restrictions on their investments for just those reasons.)

529 E. Front Street, P. O. Box 4109, Butte, MT 59702 (406) 782-2388 FAX (406) 782-9012

The trend in venture capital investing has changed dramatically in the last five years. Private equity money for start-up companies is getting harder to find. Venture capital companies are focusing on more money in fewer deals, and trying to make those quality deals. Venture investors are looking for :

1) companies with products in the market who need capital to expand market penetration,
2) companies with products who want to acquire additional products, or distribution, and
3) companies just beginning product introduction.

It is hard to find venture firms that focus any significant portion of their investment portfolio on start-ups. Increasingly this is becoming the role of private or "angel" investors. The "Private Equity Network" in Montana may be a source of private equity for some start-up or expanding companies. However, when significant capital is needed, companies still must access either venture or public financing. Venture firms still have the same issues about business and management expertise. Most of the time, if you haven't done it before, your skills are suspect. Too often the private or "angel" investor doesn't have the time or the specific background to provide the help the company may need, or the venture investor may think it needs. It is ironic that in this age of communication, that closeness counts, but it does.

Bricks and mortar are the generally last thing any private or venture investor wants to finance. They want their money to go into marketing product and product expansion. While there are some "virtual" companies that don't require R&D or production, most of us do. This often requires equipment and buildings. Financing these needs is an additional challenge.

I am probably preaching to the choir, but I believe economic growth in Montana requires multiple programs. Some of those are in place, some could be. I believe some of the key components include:

1. sources of private equity
2. economic incentive program (tax break) for equity investment in new business
3. state based venture fund with a good investment track record and professional managers
4. coordination effort to attract "venture" money to Montana
5. low interest loan programs for "bricks and mortar"
6. tax incentives or holidays on new construction and equipment
7. create awareness of funding opportunities
8. promotion of technology transfer from State Universities to in-state companies
9. company/university partnerships to develop business and business opportunities
10. promote interaction and information pooling of related businesses in the state, i.e. manufacturing, mining, research, etc. .
11. coordinated state effort to attract growth oriented manufacturing and/or R&D business (biological or computer based business as an example)

The State needs to identify the resources which can be used to attract and grow new business. Montana needs to manage the promotion of those resources, provide incentives, and coordinate private and public efforts.

I believe MSTA has and can continue to provide a valuable role in economic development in Montana. However no one entity can provide for economic growth. There needs to be a coordinated effort.

The next time you are in Butte, please stop and visit. I would like to show you what Mycotech is all about, and hopefully give you a glimpse of the future.

Sincerely,
Mycotech Corporation

Robert Kearns
President

DORSEY & WHITNEY LLP

MINNEAPOLIS
WASHINGTON, D.C.
LONDON
BRUSSELS
HONG KONG
DES MOINES
ROCHESTER
COSTA MESA

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JOHN W. MANNING

NEW YORK
DENVER
SEATTLE
FARGO
BILLINGS
MISSOULA
GREAT FALLS

December 2, 1996

Governor Marc Racicot
State of Montana
State Capitol Building
Helena MT 59620

Dear Governor Racicot:

This letter is being sent in support of the Montana Science and Technology Alliance ("MSTA") and its various programs, especially the seed capital program.

In my experience as a corporate and securities lawyer involved in advising emerging companies, I strongly believe that the MSTA has worked successfully to fill a large void in the financing of start-up and developing companies in Montana. Historically, Montana has had few companies financed by venture capital firms or institutional investors. Until recently, there has been no Montana-based venture capital firm. There are no small business investment companies (SBIC's). There are no investment banking firms with interest in early stage financings. While there are a few individuals, or angels, interested in investing in emerging companies, companies have had difficulty locating those potential investors in such a large state.

The MSTA has not only identified and provided financing for some of the State's best emerging companies, it has also served as a de facto clearing house of information for emerging companies. Emerging companies cannot develop without financing and nurturing. Despite constitutional, legislative and political restraints, the MSTA has served and continues to serve this role.

It is important that any decision with respect to the future of the MSTA be based on accurate information. I believe the MSTA and its programs have successfully served their purpose, despite considerable odds against them. Thank you for your attention.

Very truly yours,

John W. Manning

JWM:dk-g

EXHIBIT 12
DATE 3/10/97
HB 578

Montana Science and Technology Alliance 1997 Biennial Report

Exhibit # 12 HB578
Booklet (17 pages)
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

EXHIBIT 13
DATE 3/10/97
HB 578

March 10, 1997

Jon Marchi's testimony on HB 578, "An Act Eliminating the Montana Board of Science & Technology Development ..."

My name is Jon Marchi. I reside near Polson, MT and operate a diversified cattle and farming operation. In addition, I serve as President of the Montana Private Capital Network, a non profit organization (now 4 years old) dedicated to helping Montana businesses find equity capital for start-up or expansion purposes. I also serve as Chairman of the Glacier Venture Fund one of only two active venture capital funds in Montana. Finally, I am a director and chairman of a publicly held company headquarters in Billings with about 80 employees.

As a small businessman and as a citizen of our state I oppose this bill.

I oppose the bill for the following reasons:

. MSTA is now eleven years old and is now just starting to pay off. The recent Ultrafem example is a good one - all the state's money back and still ownership of two-thirds of the original investment.

. MSTA is now self sufficient. It has actually been self funding since 1995. I well understand that the revenue projections going from $710,000 (already exceeded as I understand it) in FY96 to $1,900,000 in FY 98 will be a great boon to the general fund but it does not do much for businesses in Montana who need equity capital to expand. Let's not kill the goose who is now starting to lay the golden eggs.

. With MSTA's demise there will be no source of higher risk technology orientated equity capital available in Montana. The venture fund that I am affiliated with will not be making those kinds of investments. Likewise, the other venture fund in Montana needs an investing partner such as MSTA to help spread those higher risks.

. With MSTA's demise we begin to dismantle the infrastructure that the state has so carefully nurtured over the past several years. It seems that we will then be going in the opposite direction from the rest of the country and the world. To create high paying non minimum wage jobs requires a strong technology and/or education component. MSTA has started to successfully help create those kinds of jobs for Montanan's through its funding of companies such as Ultrafem in Lolo, Gateway Software in Fromberg, Mycotech in Butte, Pasta Montana in Great Falls and Safe Shop Tools in Missoula.

. I well understand that MSTA has some major structural problems. I served on its board in the early years. If you continue with MSTA those problems need to be corrected in order to create a top notch program for Montana. But those problems can be corrected. Instead of killing the program now please consider putting it on hold for two years while an in depth analysis is done. Those recommendations could then be made well in advance of the 1999 legislative session.

. If you transfer the existing portfolio to the Board of Investments and then kill the program please consider the following:

How can a state or a state agency manage an existing technology orientated equity venture capital portfolio ...
...when it is no longer in the business.
...can't make subsequent investments,
...can't sit on the boards of those companies it has invested in,
...no longer has the personnel and administrative infrastructure to help these companies continue to grow?

Thanks for you time. I know you all have a tough, thankless job and I appreciate your efforts.

HOUSE OF REPRESENTATIVES
55TH LEGISLATIVE SESSION - 1997

ROLL CALL
APPROPRIATIONS COMMITTEE

DATE 3-10-97

NAME	PRESENT	ABSENT	EXCUSED
Rep. Tom Zook, Chairman	✓		
Rep. Ed Grady, Vice Chairman, Majority	✓		
Rep. Joe Quilici, Vice Chairman, Minority	✓		
Rep. Beverly Barnhart	✓		
Rep. Ernest Bergsagel	✓		
Rep. John Cobb	✓		
Rep. Roger DeBruycker	✓		
Rep. Gary Feland	✓		
Rep. Don Holland	✓		
Rep. John Johnson	✓		
Rep. Royal Johnson	✓		
Rep. Betty Lou Kasten	✓		
Rep. Bob Keenan	✓		
Rep. Matt McCann	✓		
Rep. Red Menahan	✓		
Rep. Ray Peck	✓		
Rep. Steve Vick	✓		
Rep. Bill Wiseman	✓		

APPROPRIATIONS COMMITTEE
HOUSE OF REPRESENTATIVES

DATE 3/10/97 BILL NOS. HB 391, 499, 511, 567, 580, 557, 574, 576, 578

PLEASE PRINT

NAME	ADDRESS	BILL NO.	PROPONENT	OPPONENT
Tom Dale	1534 11th Ave	HB567	✓	
Ralph Peck	MT Dept of Agriculture	HB391	✓	
LOIS MENZIES	DEPT. OF ADMIN	HB 567	✓	
BRIAN McCullough	DLI - Capitol Station	HB 567	✓	
Bill Strauch	MT Food Dist Assn	HB 391	✓	
MIKE Murray	Lewis & Clark Co	HB511	✓	
Philip Grossberg	DLI - Job Service Helena Off	HB 567	✓	
Gary Wright	DLI - Job Service	H 567	✓	
Tom Schneider	MPEA	HB567	✓	
Dave Hollis	HEA JOB SERVICE - DLI	HB567	✓	
Dan Anderson	DPHHS	567	✓	
George H. Harris	Livestock	580		✓
Tracy Garcia	2913 Grand Blvd	499	—	
BETTY WADDELL	311 Power, MT Assoc of Churches	499	✓	
Kathleen Martin	DPHHS	391	✓	
John Males	~~MEA~~ M.F.T./MEA-FE	567	✓	
Terry Minow	MFT/MEA-FE	567	✓	
ANDY POOLE	Commerce	391	✓	
Mary Bryson	Revenue	391 511		✓
Tom Foley	AFSCME	567	✓	
Rebecca Mahoney	MSTA Board	578		✓

PLEASE LEAVE PREPARED TESTIMONY WITH COMMITTEE SECRETARY.

visitreg.mp

APPROPRIATIONS COMMITTEE
HOUSE OF REPRESENTATIVES

DATE 3/10/97 BILL NOS. _____

PLEASE PRINT

NAME	ADDRESS	BILL NO.	PROPONENT	OPPONENT
Will Brooke	208 James Ave/Bozeman MT	HB578		X
Loren Smith	1500 51st Street S. GTF 59715 59405	"		X
Shirley Brown	DPHHS-CFSD	HB576	X	
Kirk A. Astroth	7359 Raven Dr. Belgrade	HB576	X	
Kandice Morse	DPHHS- CFSD	HB576	X	
Dolph Harris	801 9th St. G.W Stevens	HB578		X
Mark J Giese	405 33rd Ave NE Great Falls	HB 578		
Alan Nicholson	1 Quarry Lane, Helena, MT.	HB 578		X
Bob Kearns	529 E Front, Butte, MT	HB 578		X
Jerry Spencer	212 7th Ave, Helena MT	578		X
Richard Potter	275 Wolverine, Seeley Lake 59868	578		X
Tom Marchi	7283 Valley View, Polson MT	578		X
Bob Anderson	DOC	574	X	
Terry Minow	MT Fed State Employees,	574	X	
Robert Torres	MT Ch. NASW	HB576	✓	
Gail Gray	409 Missouri, Deer Lodge	HB574 HB577	—	
Vance Ulrich (V. Moravek)	212 7th Ave. #3 Helena MT 59601	HB578		X

PLEASE LEAVE PREPARED TESTIMONY WITH COMMITTEE SECRETARY.

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 14, 1997, at 8:00 a.m., in Room 312-2.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Edward J. "Ed" Grady, Vice Chairman (Majority) (R)
Rep. Joe Quilici, Vice Chairman (Minority) (D)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. John Cobb (R)
Rep. Roger DeBruycker (R)
Rep. Gary Feland (R)
Rep. Don Holland (R)
Rep. Royal C. Johnson (R)
Rep. Betty Lou Kasten (R)
Rep. Bob Keenan (R)
Rep. William T. "Red" Menahan (D)
Rep. Steve Vick (R)
Rep. William R. Wiseman (R)

Members Excused: Rep. John Johnson (D)
Rep. Matt McCann (D)
Rep. Ray Peck (D)

Members Absent: None.

Staff Present: Clayton Schenck, Legislative Fiscal Analyst
Marjorie Peterson, Committee Secretary

Committee Business Summary:

Hearing:	HB 188, HB 244, SJR 2, SB 19, SB 269
Executive Action:	HB 14 DO PASS AS AMENDED, HB 47 DO PASS AS AMENDED, HB 119 TABLED, HB 188 DO PASS AS AMENDED, HB 296 TABLED, HB 578 DO PASS AS AMENDED

Closing by Sponsor:
SEN. GAGE closed the hearing on SB 19.
{Tape: 3; Side: A; Approx. Tape Counter: 31.8.}

EXECUTIVE ACTION ON HB 188

Motion/Vote: REP. BERGSAGEL moved amendment HB018801.a12 Do Pass. Motion carried unanimously.
{Tape: 3; Side: A; Approx. Tape Counter: 34.9.}

Motion/Vote: REP. BERGSAGEL moved amendment HB018810.a12 Do Pass. Motion carried unanimously.
{Tape: 3; Side: A; Approx. Tape Counter: 37.5.}

Motion/Vote: REP. BERGSAGEL moved HB 188 Do Pass As Amended. Motion carried 12 - 3, with REPS. DEBRUYCKER, FELAND, and VICK voting no.
{Tape: 3; Side: A; Approx. Tape Counter: 38.8.}

EXECUTIVE ACTION ON HB 14

Motion: REP. ROYAL JOHNSON moved HB 14 Do Pass As Amended.
{Tape: 3; Side: A; Approx. Tape Counter: 43.0.}

Motion/Vote: REP. BERGSAGEL moved amendment HB001401.a12 Do Pass. Motion carried 14 - 1, with REP. ROYAL JOHNSON voting no.
{Tape: 3; Side: A; Approx. Tape Counter: 44.3.}

Motion/Vote: REP. BERGSAGEL moved amendment HB001440.a12 Do Pass. Motion carried unanimously.
{Tape: 3; Side: B; Approx. Tape Counter: 0.1.}

Motion/Vote: REP. ROYAL JOHNSON moved amendment on WCC Billings Do Pass. Motion failed 6 - 11 on a roll call vote, with REPS. BARNHART, HOLLAND, JOHN JOHNSON, ROYAL JOHNSON, MENAHAN, and QUILICI voting yes.
{Tape: 3; Side: B; Approx. Tape Counter: 8.7.}

Motion/Vote: REP. ROYAL JOHNSON moved HB 14 Do Pass As Amended. Motion carried 13 - 2, with REPS. DEBRUYCKER and VICK voting no.
{Tape: 3; Side: B; Approx. Tape Counter: 13.3.}

EXECUTIVE ACTION ON HB 578

Motion: REP. ROYAL JOHNSON moved HB 578 Do Pass.
{Tape: 3; Side: B; Approx. Tape Counter: 14.7.}

Discussion:
REP. ROYAL JOHNSON submitted a memorandum from Peter Blouke, Director, Department of Commerce, dated March 14, 1997, on the

transition of the Montana Science and Technology Alliance. **EXHIBIT 11.**
{Tape: 3; Side: B; Approx. Tape Counter: 15.0.}

Motion/Vote: **REP. BARNHART moved a substitute motion to sunset the bill in two years. Motion failed 5 - 10, with REPS. BARNHART, WISEMAN, MENAHAN, QUILICI, and MCCANN voting yes.**
{Tape: 3; Side: B; Approx. Tape Counter: 16.2.}

Motion/Vote: **REP. ROYAL JOHNSON moved HB 578 Do Pass As Amended. Motion carried 12 - 3, with REPS. WISEMAN, MENAHAN, and BARNHART voting no.**
{Tape: 3; Side: B; Approx. Tape Counter: 18.4.}

EXHIBIT 11
DATE 3/14/97
HB 578

MONTANA
DEPARTMENT OF COMMERCE

Director's Office
1424 9th Avenue PO Box 200501
Helena, MT 59620-0501

Phone: (406) 444-3494
FAX: (406) 444-2903
TDD: (406) 444-2978

MEMORANDUM

TO: Representative Royal Johnson

FROM: Peter S. Blouke, Ph.D.
Director

DATE: March 14, 1997

SUBJECT: Transition of Montana Science and Technology Alliance

The purpose of this memorandum is to provide an explanation of the process I intend to follow if HB 578 is passed by the legislature.

Authority for supervision and administration of the Seed Capital Investment Portfolio and the Research and Development Financing Program will transfer to the Board of Investments. The transfer would allow the Department and the Board to continue to monitor companies within the portfolio and provide the necessary authority to transfer or sell warrants or convertible debentures, if appropriate, and to negotiate on behalf of the state in the event a portfolio company enters into dissolution or liquidation.

Because no future seed capital investments are intended, the Department and Board's efforts would focus on the existing companies within the portfolio. I have had numerous conversations with Mr. Carroll South, Executive Director of the Board of Investments, about the transition. Based on our discussions and Mr. South's contacts with the Board, it is our plan to evaluate the portfolio over the next biennium and come back to the legislature with recommendations for sale, retention, or write off of individual company loans. There is no intent to immediately sell any of the investments in the portfolio.

Technical assistance and support for the portfolio companies is available from staff within the Economic Development Division.

It is also my intent to establish an advisory council comprised of current and/or former members of the Montana Science and Technology Alliance Board to advise the Department regarding actions that may be appropriate

concerning the 14 companies that comprise the Seed Capital portfolio. I believe the current MSTA Board has demonstrated significant expertise and a strong commitment to the program and would be a very valuable resource to the Department as we continue to evaluate the portfolio.

Finally, during the 1999 biennium it would be my intent to provide a quarterly report to the Legislative Finance Committee on the status of the Seed Capital portfolio.

ROLL CALL
APPROPRIATIONS COMMITTEE

DATE 3/14/97

NAME	PRESENT	ABSENT	EXCUSED
Rep. Tom Zook, Chairman	✓		
Rep. Ed Grady, Vice Chairman, Majority	✓		
Rep. Joe Quilici, Vice Chairman, Minority	✓		
Rep. Beverly Barnhart	✓		
Rep. Ernest Bergsagel	✓		
Rep. John Cobb	✓		
Rep. Roger DeBruycker	✓		
Rep. Gary Feland	✓		
Rep. Don Holland	✓		
Rep. John Johnson			✓
Rep. Royal Johnson	✓		
Rep. Betty Lou Kasten	✓		
Rep. Bob Keenan	✓		
Rep. Matt McCann			✓
Rep. Red Menahan	✓		
Rep. Ray Peck			✓
Rep. Steve Vick	✓		
Rep. Bill Wiseman	✓		

HOUSE STANDING COMMITTEE REPORT

March 15, 1997

Mr. Speaker: We, the committee on **Appropriations** report that **House Bill 578** (first reading copy -- white) **do pass.**

Signed: Tom Zook
Tom Zook, Chair

3-15-97

Committee Vote:
Yes 12, No 3.

570843SC.Hgd

SENATE FINANCE & CLAIMS

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0281	RYAN, WILLIAM		APPROPRIATION FOR APPRENTICESHIP INSTRUCTION PROGRAMS			
	3/28	4/10		CONCUR 4/10 VOTE: 9-8		4/10
HB0294	COBB, JOHN		LEGISLATIVE AUDIT OF DEPARTMENT OF REVENUE PROPERTY REAPPRAISAL SYSTEM			
	1/27	2/03		CONCUR 2/11 VOTE: 8-6		2/12
HB0354	COBB, JOHN		REVERTED FUNDS DEPOSITED IN LONG-RANGE BUILDING PROGRAM ACCOUNT			
	2/26	3/07		TABLED ON 03/07 VOTE: 13-0		
HB0358	KEENAN, BOB		CLARIFY USE INSURANCE PRODUCERS ANNUAL RENEWAL FEES			
	2/11	3/04		CONCUR 3/4 VOTE: 16-0		3/04
HB0398	JOHNSON, ROYAL		LEASE WITH OPTION TO PURCHASE CERTAIN BUILDINGS			
	3/28	4/09		CONCUR AS AMENDED 4/9 VOTE: 15-1		4/09
HB0405	WYATT, DIANA		CREATING A COMMUNITY SUPERVISED RELEASE PROGRAM TO DIVERT FELONY OFFENDERS			
	3/14	3/19		TABLED ON 03/20 VOTE: 9-8		
HB0544	GRADY, ED		REVISE CORRECTIONAL FACILITY LAWS TO INCLUDE CORPORATIONS			
	3/18	3/21	4/11	CONCUR 3/21 VOTE: 15-2		3/22
HB0559	GRIMES, DUANE		REVISE & RECODIFY DUI PENALTIES - EXTEND MONTHLY MONITORING PERIOD BY 6 MOS.			
	3/14	3/18	3/19	CONCUR AS AMENDED 3/21 VOTE: 11-5		3/22
HB0567	SQUIRES, CAROLYN		REVISE EMPLOYEE PROTECTION ACT ELIGIBILITY AND FUNDING			
	3/28	4/09		CONCUR 4/9 VOTE: 14-3		4/09
HB0576	COBB, JOHN		ENDOWMENT FOR CHILDREN			
	3/24	4/09		CONCUR 4/9 VOTE: 13-4		4/09
HB0578	JOHNSON, ROYAL		ELIMINATE BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT IN 1999			
	3/28	4/09		CONCUR AS AMENDED 4/11 VOTE: 17-0		4/11
HB0580	MCCANN, MATT		REQUIRE AGENCY PROGRAM BUDGET TO CONTAIN PLAN TO REDUCE BASE BUDGETS BY 100%			
	3/22	4/02	4/11	CONCUR AS AMENDED 4/8 VOTE: 10-7		4/11

House BILL NO. 578

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE BOARD OF INVESTMENTS; REVISING THE JOB INVESTMENT LOAN LAWS; APPROPRIATING COAL SEVERANCE TAX PERMANENT FUNDS TO THE OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION TO REPAY THE RESEARCH AND DEVELOPMENT LOAN; PROVIDING FOR THE DEPOSIT OF THE LOAN REPAYMENT; AMENDING SECTIONS 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, AND 90-3-901, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

APPROVED BY COM ON APPROPRIATIONS

House BILL NO. 578

INTRODUCED BY [illegible]

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE BOARD OF INVESTMENTS; REVISING THE JOB INVESTMENT LOAN LAWS; APPROPRIATING COAL SEVERANCE TAX PERMANENT FUNDS TO THE OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION TO REPAY THE RESEARCH AND DEVELOPMENT LOAN; PROVIDING FOR THE DEPOSIT OF THE LOAN REPAYMENT; AMENDING SECTIONS 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, AND 90-3-901, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-18-103, MCA, is amended to read:

"**2-18-103. Officers and employees excepted.** (1) Parts 1 and 2 do not apply to the following positions in state government:

(a) elected officials;

(b) county assessors and their chief deputy;

(c) employees of the office of consumer counsel;

(d) judges and employees of the judicial branch;

(e) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(f) officers or members of the militia;

(g) agency heads appointed by the governor;

(h) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(i) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(j) teachers under the authority of the department of corrections or the department of public health and human services;

(k) investment officer, assistant investment officer, executive director, and ~~three~~ five professional staff positions of the board of investments;

(l) four professional staff positions under the board of oil and gas conservation;

(m) assistant director for security of the Montana state lottery;

~~(n) executive director and senior investment officer of the Montana board of science and technology development;~~

~~(o)~~(n) executive director and employees of the state compensation insurance fund;

~~(p)~~(o) state racing stewards employed by the executive secretary of the Montana board of horseracing;

~~(q)~~(p) executive director of the Montana wheat and barley committee;

~~(r)~~(q) commissioner of banking and financial institutions; and

~~(s)~~(r) training coordinator for county attorneys.

(2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative branch, other than the office of consumer counsel:

(a) as used in parts 1 through 3 of this chapter, references to the "department of administration" or "department" apply to the legislative council established by 5-11-101, which may delegate administrative duties to the legislative services division established by 5-11-111;

(b) as used in 2-18-102, the term "governor" applies to the legislature; and

(c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined in 17-7-102."

Section 2. Section 17-6-201, MCA, is amended to read:

"**17-6-201. Unified investment program -- general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be

administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment: The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

~~(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.~~"

Section 3. Section 17-6-302, MCA, is amended to read:

"**17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Department" means the department of commerce provided for in 2-15-1801.

~~(4)~~(5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

~~(5)~~(6) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

~~(6)~~(7) "Loan participation" means loans or portions ~~thereof~~ of loans bought from a financial institution and does not include the purchase of debentures issued by a capital company.

~~(7)~~(8) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests ~~are~~ is owned and controlled by residents of Montana.

~~(8)~~(9) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax ~~revenues~~ revenue in the future to the people of Montana, either directly or indirectly.

~~(9)~~(10) "Montana economy" means any business activity in the state of Montana, including those ~~which~~ that continue existing jobs or create new jobs in Montana.

~~(10)~~(11) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 4. Section 17-6-305, MCA, is amended to read:

"**17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy -- report by board.** (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25% of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of

the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of science and technology development and administered by the department pursuant to ~~17-6-308(3)~~ part 5 of this chapter ~~may~~ is not ~~be~~ included in the 25% of the trust fund allocated to the board for in-state investment under this section.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by 17-7-111."

Section 5. Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall ~~allow~~ manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development~~, provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. This authority does not extend beyond June 30, 1997, for seed capital project loans and beyond June 30, 1997, for research and development projects~~. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios. Until the ~~Montana board of science and technology development~~ department makes a loan pursuant to the provisions of ~~Title 90,~~ part 5 of this chapter ~~3~~, the $2 million in

funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As ~~seed capital and mezzanine financing~~ loans made pursuant to part 5 of this ~~subsection~~ chapter are repaid, the ~~Montana board of science and technology development~~ department may reinvest the principal in new loans pursuant to part 5 of this chapter.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations."

Section 6. Section 17-6-503, MCA, is amended to read:

"**17-6-503. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

~~(1) "Board" means the Montana board of science and technology development provided for in 2-15-1818.~~

~~(2)~~(1) "Department" means the department of commerce provided for in 2-15-1801.

(2) "Job investment administrative account" means the account established in 17-6-509.

(3) "Job investment loan account" means the account established in [section 7].

~~(3)~~(4) "Loan review committee" means the committee that is established by the department to consider economic development loan applications for funding by the federal community development block grant program and that is responsible for reviewing and recommending to the ~~board~~ department the approval or denial of job investment loans subject to this part and rules implementing this part.

~~(4)~~(5) "Qualified business" means a business enterprise that either is or will be located in the state and that produces goods or provides services that will, as a result of receiving a job investment loan, create jobs for Montana workers."

NEW SECTION. **Section 7. Job investment loan account.** There is a job investment loan account. The department shall deposit all principal payments on loans made pursuant to this part in the account and may make additional loans pursuant to this part. The department shall make loans from the funds allocated to the department under 17-6-308.

Section 8. Section 17-6-509, MCA, is amended to read:

"17-6-509. **Job investment administrative account.** There is a job investment administrative account in the state special revenue fund. The department shall deposit up to 20% of interest payments on job investment loans into the account. Money in the account must be used to pay the costs of administering this part, including personnel costs, operating costs, and administrative costs. Interest payments not deposited into the account must be deposited into the coal severance tax income fund established in 17-5-703."

Section 9. Section 17-6-510, MCA, is amended to read:

"**17-6-510. Loan review committee -- conflict of interest -- servicing of loans.** (1) The department shall establish a loan review committee to administer this part. The committee shall accept and review loan applications pursuant to rules adopted by the department. The committee shall recommend to the ~~board~~ department the approval or disapproval of loans. A loan may not exceed $500,000.

(2) If a member of the committee has a financial interest in a business that submits a job investment loan application, then the application must be denied.

(3) The department ~~shall~~ may contract for the servicing of loans.

(4) The department is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into under this part."

Section 10. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;

16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; ~~90-3-301;~~ 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

Section 11. Section 90-8-201, MCA, is amended to read:

"**90-8-201. Certification of Montana capital companies -- certification of a Montana small business investment capital company.** (1) The department shall certify one Montana small business investment capital company, and from time to time, the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company or as the Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that ~~such~~ the investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company or as the qualified Montana small business investment capital company.

(5) To be eligible for certification under this section as the Montana small business investment capital company, the applicant shall commit to:

(a) ~~utilize~~ using the tax credits to accumulate private capital~~,~~ with the intention of being designated a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

(b) ~~target~~ targeting its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and development, ~~the Montana board of science and technology development (second stage),~~ small business incubators, community development block grant programs, and projects emerging from economic development programs of Montana certified communities, with the objective of providing significant investment opportunities in an area where economic development capital is limited;

(c) ~~consider~~ considering investment opportunities originating in any Montana county; and

(d) ~~adopt~~ adopting investment guidelines that ensure that not less than 10% of its available capital is invested in counties with populations of 20,000 or less."

NEW SECTION. **Section 12. Appropriation -- loan repayment.** There is appropriated to the office of the commissioner of higher education from the coal severance tax permanent trust fund up to $9,350,000 for the purpose of repaying the research and development loan made by the Montana board of science and technology development to the university system. The appropriation must be used to repay the loan principal to the board of investments as the successor in interest to the Montana board of science and technology development. The repayment must be deposited in the coal severance tax permanent fund. The principal must be repaid within 30 days after [the effective date of this act].

NEW SECTION. **Section 13. Repealer.** Sections 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, and 90-3-901, MCA, are repealed.

NEW SECTION. **Section 14. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 15. Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 17, chapter 6, part 5, and the provisions of Title 17, chapter 6, part 5, apply to [section 7].

NEW SECTION. **Section 16. Three-fourths vote required.** Because [section 12] statutorily appropriates money from the coal severance tax trust fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage of [section 12]. If a vote of three-fourths of the members of each house is not received, then [section 12] is void.

NEW SECTION. **Section 17. Effective date.** [This act] is effective July 1, 1997.

-END-

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By **CHAIRMAN CHUCK SWYSGOOD**, on April 9, 1997, at 7:07 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Larry Baer (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. James H. "Jim" Burnett (R)
Sen. B.F. "Chris" Christiaens (D)
Sen. Eve Franklin (D)
Sen. Loren Jenkins (R)
Sen. Greg Jergeson (D)
Sen. John "J.D." Lynch (D)
Sen. Dale Mahlum (R)
Sen. Ken Miller (R)
Sen. Arnie A. Mohl (R)
Sen. Linda J. Nelson (D)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)

Members Excused: None

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	HB 398, 4/2/97; HB 567, 4/2/97; HB 576, 4/2/97; HB 578, 4/2/97
Executive Action:	HB 398, BCCAA; HB 567, BCC; HB 576, BCC; HB 578, Failed

HEARING ON HB 567

Sponsor: **REP. CAROLYN SQUIRES, HD 68, MISSOULA**

It would be a commercial interest rate of 10% under the lease agreement rather than the tax free interest rates the state can get if they bond.

SEN. JENKINS What happens if at the end of 10 years the legislature says they don't want to buy this building? **Ms. Fulton** The landlord then owns the building.

SEN. MIKE TAYLOR I'd like a cost breakdown on lease to buy and buy to rent on the OPI building. **Nan LeFebvre, Legislative Fiscal Division** There are two pieces to this, the existing structure which the owner is willing to sell to the state over 14 years with a balloon payment at the end of 15 years. This would be $32,000 per year for 14 years with a $150,000 balloon payment at the end, based on a cost of $600,000. Negotiations and appraisals on the existing building are continuing so this is an estimate at this point. The second piece is the second floor addition which is estimated to cost approximately $900,000. The owner is willing to take a lump sum up front for that amount which is proposed by bonding for 4.7-5%. If we do not buy the second floor the owner will charge it out to the state over 10 years at 10% interest. If you add the two together based on the 10% for 10 years combined with the first floor it is about $178,000 per year in rental cost. That is the most expensive scenario and is currently in OPI's budget in HB 2. If you decide to accept this amendment and bond for the purchase of the second floor it will result in the cost savings you see in **(EXHIBIT #4)**. Whether we end up owning the building at the end of 15 years or not we're still going to have to pay for the cost of the addition.

SEN. JENKINS Are we setting a precedent with this? Why weren't prisons included in this bill? **Ms. LeFebvre** This proposal came about through discussions between LFD, the budget office, OPI and DOA to find the most cost effective way to do this. It is unusual but can save the state money.

Closing by Sponsor:

REP. JOHNSON Amendment #hb039802.agp **(EXHIBIT #3)** states if the lease contract provides for a purchase option. That is important because we don't want to bond this and walk away in 10 years. We may be setting a precedent but it may be one that should be set. Remember, a two-thirds vote of the legislature is required because doing this. You need to consider this type of option and let some flexibility be built into how this is handled. Hopefully, we will not have government growing as fast as it has in the past but we are making these leases right now.

{Tape: 1; Side: B; Approx. Time Count: 7:54; Comments: None.}

HEARING ON HB 578

Sponsor: **REP. ROYAL JOHNSON, HD 10, BILLINGS**

Proponents: **Andy Poole, Department of Commerce**

Opponents: **Rebecca Mahurin, Montana Science and Technology Alliance**
Loren Smith, Montana Science and Technology Alliance
Steve Huntington, Northern Rockies Venture Fund
Jon Marchi, Montana Private Capital Network
Alan Nicholson, Montana Ambassadors
SEN. KEN MESAROS, SD 25, CASCADE
Doug Coffin, McLaughlin Research Institute
REP. BILL WISEMAN, HD 41, GREAT FALLS
Richard Crofts, Commissioner of Higher Education

Opening Statement by Sponsor:

REP. ROYAL JOHNSON, HD 10, BILLINGS The legislature set up the Montana Science and Technology Alliance (MSTA) as a part of the Department of Commerce (DOC) years ago. This alliance has been operated as a quasi-independent agency with a board of directors. There are two sections to this program, research and development and the seed capital program. The seed capital program is to help small businesses get started in the State of Montana. We cut the program back in 1991 and changed the seed capital program to mezzanine financing in 1995. HB 578 dissolves the program with the Board of Investments taking this on. The board will no longer make investments. We will forgive the research and development loans to the university system. Other research and development loans are to Deaconess Institute in Billings and McLaughlin Institute in Great Falls, these loans have not been written off because they have a requirement for repayment which is 2½ times the amount of money that was loaned to them. If we are going to make grants to research in the state we should do it honestly and say we're taking it out of the coal trust. The government is not a good lender of money for seed capital. The companies that have seed capital loans have a payment schedule to follow so we will end up with some return on these loans. The Board of Investments will use the MSTA as an advisory council on how best to get out of these things.

{Tape: 1; Side: B; Approx. Time Count: 8:04; Comments: None.}

Proponents' Testimony:

Andy Poole, Department of Commerce I'm here in reluctant support of this bill because existing statute sunsets MSTA on June 30, 1997. Without MSTA some other entity needs to manage the portfolio, HB 578 transfers the portfolio to the Board of Investments which we feel is a prudent move.

Opponents' Testimony:

Rebecca Mahurin, Montana Science and Technology Alliance **REP. JOHNSON** showed you that there have been successes in this program. He also pointed out that this is the only program in

the state that uses Coal Tax Trust money to affect the economy of Montana. Testimony **(EXHIBIT #5)**, MSTA 1997 biennial report **(EXHIBIT #6)** and letters to the Governor from private companies **(EXHIBIT #7)** handed in.

Loren Smith, Montana Science and Technology Alliance MSTA is one of the few programs in the state that has done some good. The MSTA board never wanted the mezzanine loan program. The three mezzanine loans we approved could have been funded by a bank, you don't need this program. The MSTA program has taken money from the coal tax trust fund and invested it in the state to create jobs for Montanan's. The board members are not interested in being on an advisory council and feel that this shouldn't be handed over to the Board of Investments. We think MSTA should sit in place for another 2-4 years and then the private companies can take over. The citizens of Montana will not be well served by ending the MSTA and having a committee consisting of government employees reviewing the JIL loan program. Research and development has made the universities responsible for finding some degree of commercial application for their R&D efforts and is working well.

{Tape: 1; Side: B; Approx. Time Count: 8:23; Comments: None.}

Steve Huntington, Northern Rockies Venture Fund We are a Montana based venture capital fund with over $2 million of capital available to invest in early stages of business in the state. We plan to invest over 75% of that money in Montana. $1 million in our fund was invested by MSTA and $1 million invested by private investors. We have made four commitments since the fund has been open and we expect to have the funds fully invested by mid-1999. MSTA has been a success and has done a better job than any publicly sponsored fund in the country. The program is not without its problems, most of them having to do with doing a private sector activity from a public funded agency. The requirements a public agency has to go through make it difficult to be a private styled venture capitalist. A great deal has been accomplished with a great deal more to do. The notion of encouraging the university system and other research institutes to get involved in commercial types of research is important. I hope you try to maintain this program into the future.

Jon Marchi, Montana Private Capital Network Testimony handed in. **(EXHIBIT #8)**

Alan Nicholson, Montana Ambassadors The Montana Ambassadors is a group of approximately 150 statewide business people interested in economic development in Montana. We urge the legislature to not pass this bill and continue MSTA existence. This is a fully functioning venture capital program in the state and I feel it is premature to end it. The Board of Investments is not the appropriate place to put these investments, they are not tuned into risk investments. I urge you to defeat this bill.

{Tape: 2; Side: A; Approx. Time Count: 8:35; Comments: first 5 minutes of side A accidentally recorded over.}

SEN. KEN MESAROS, SD 25, CASCADE I am opposed to HB 578, especially in regards to the medical research facilities. I encourage the committee to consider an amendment to write off the medical facility research and development loans. **(EXHIBIT #9, 10, & 11)** handed out.

Doug Coffin, McLaughlin Research Institute I am supporting **SEN. MESAROS'** amendment. We are a private non-profit research institute dedicated to biomedical research with the ultimate goal of improving the overall quality of life for people. The loans made to McLaughlin Research Institute were characterized as seed capital loans, when in fact our loans are medical facility research and development project loans. We ask that we be included in legislation that would forgive repayment of these loans. The original intent was that we pay back the loans with royalties, that agreement was modified through negotiations when the loan was awarded so we ended up with a repayment schedule. We think we should be included in the legislation along with the universities and we hope these loans can be rescheduled to be paid out of royalties or forgiven altogether.

{Tape: 2; Side: A; Approx. Time Count: 8:47; Comments: None.}

REP. BILL WISEMAN, HD 41, GREAT FALLS I believe McLaughlin and Deaconess have to be treated exactly the same way as MSU and U of M. If you put through legislation that discriminates between these, I believe you are setting the state up for legal action. I looked at the loan documents and they are all the same. I strongly suggest you put in **SEN. MESAROS'** amendment so that everyone that has R&D loans is treated the same. I disagree on moving science and technology to the Board of Investments because the two companies making money, if transferred to the Board of Investments will be transferred in their present form which is convertible preferred or convertible bonds. A state agency can only hold bonds or preferred. Should either of these two firms force conversion from preferred stock or bonds to common stock the Board of Investment will have to get rid of them as they are not allowed to hold common stock. They will transfer the assets, common stock, to TRS or PERS which can hold common stock. The people in the Department of Commerce are members in PERS and are not exactly disinterested. I ask you to consider this situation.

Richard Crofts, Commissioner of Higher Education The university system has not had a hand in generating legislation to establish forgiveness of these loans. Our intention has always been to pay off the loans, they are agreements we have entered into. I'd like to remind you what has been done with this money. On the average these funds have leveraged about 6-7 fold in matching funds. The State of Montana has an annual research and development business in the university system of about $65 million. We've presented testimony to this and previous

legislatures about the size of that business and what it means in terms of jobs. That is what the MSTA program has done for the State of Montana. We've had a beneficial, working relationship with MSTA. To access these loans through MSTA we have had to demonstrate the commercial applicability of the projects and partnerships with private enterprise. We stand before the State of Montana with desperate needs in terms of continuing this research and development program. We have two major grants up for renewal, from the National Science Foundation and the Department of Energy, both in the EPSCORE program requiring matching dollars, about $1 million for each in the upcoming biennium. There is no funding currently available to carry forward the state commitment to those projects. The EPSCORE program requires a partnership between the university system, state government and the private sector. At this point the state government commitment for the next two years is not in place, it was a part of the Today and Tomorrow program which may be put to the vote in 1998 but that does not help us with our desperate needs for this biennium. I hope you will find a way to keep HB 578 alive as we continue to work with the Governor's office in a way to secure funding for research and development projects.

{Tape: 2; Side: A; Approx. Time Count: 8:55; Comments: None.}

Questions From Committee Members and Responses:

SEN. LYNCH MSTA would sunset this year, do you have a bill to carry on? **Dr. Mahurin** We did have a bill introduced, HB 578, which asked that the sunset date be amended for 2 years to June 30, 1999. **REP. JOHNSON** amended the bill which is the bill you now have before you.

SEN. EVE FRANKLIN If the Today and Tomorrow program proceeds, what is the structure for handling research and development investment. **Linda Reed, Governor's Office** The research and development funds would be handled similarly to how they are handed now. Currently the university system prioritizes research and development projects that they recommend for matching state funds. This list then goes to another group comprised of researchers, the Governor's office and the Department of Commerce (DOC) where they are evaluated and recommendations for funding are made. It would then go to an advisory council within DOC for the final decision to provide match funding.

SEN. FRANKLIN Would private research institutes be funded under the Today and Tomorrow program? **Ms. Reed** Private non-profit research institutions could have access to that funding by working through the university system.

SEN. CHRISTIAENS We are hearing a lot of difference between private non-profit R&D versus university R&D regarding repayment with royalties. How do you see these being handled for the next 2 years? **Dr. Mahurin** The contracts require the university system pay a ratcheting amount annually to repay their loan. The

contract with the private non-profits requires them to pay a percentage of the royalties on products they license or sell. This is a loan and we must require repayment.

SEN. CHRISTIAENS We've been hearing that non-profits have no royalties that don't go back for research and development. Do you ever see the ability for them to repay and what kind of provision do you have for that? **Dr. Mahurin** We have contractual provisions. I believe McLaughlin Institute is doing work that will transpire into some licensable products in the future. They are selling mice for transgenic purposes. I believe there is considerable potential for repayment of those loans.

SEN. KEATING The funds you loan come from the coal trust, how much of the coal trust money have you loaned out? **Dr. Mahurin** We have approximately $24 million under authority, $12.5 million in the seed capital side and $11.1 million has been accessed for R&D. We currently have $2.3 million that is not loaned and still available.

SEN. KEATING Are there royalties from university R&D and do they come close to the loans? **Dr. Mahurin** There are royalties being paid currently from university R&D. At this point they do not come close to the loan.

SEN. KEATING Of the seed, $11.5 million has been loaned. Are the debentures salable now? **Dr. Mahurin** Some are not yet salable but will be shortly. We have a potential for another $3 million.

SEN. KEATING Where does the money go when it come back? **Dr. Mahurin** We are required to return principle to the coal tax trust fund, we return principle plus 5% in good faith efforts to repay the trust. The remaining money is used for administration and put into a revolving fund that we can reinvest. This year we will have about $700,000 to reinvest.

SEN. KEATING How much of the $1.2 million seen capital money has gone back into the trust? **Dr. Mahurin** We are getting money back from several companies, I'm not sure of the exact figures. Approximately $100,000 was put back last year and this year it will be in the neighborhood of $500,000 - $700,000.

{Tape: 2; Side: A; Approx. Time Count: 9:09; Comments: None.}

SEN. JENKINS How much money does Glacier Venture Fund have to invest and how much is invested? **Mr. Marchi** We have $2 million. None of it is invested because we are in the licensing process.

SEN. JENKINS How much money does the Northern Rockies Venture Fund have to invest and how much is invested? **Mr. Huntington** We have $2.1 million in total capital. We have made 4 commitments totaling about $400,000. We are a pure seed capital investment company.

SEN. TAYLOR You are self funding? **Dr. Mahurin** We are self funding from returns on our investments.

SEN. GREG JERGESON Did I understand you to say that you are concerned that your responsibilities are going to be turned over to an advisory board made up of state employees? **Mr. Smith** I was referring to the mezzanine financing, in this bill the loan review will be done by a loan review committee composed of state employees within DOC.

SEN. JERGESON You're not characterizing the Board of Investments as an advisory committee? **Mr. Smith** No. The loan review committee has the authority to disperse the money.

SEN. FRANKLIN If this bill passes and MSTA does not exist, what would be the best way to fund R&D? **Dr. Coffin** I believe the state should follow the same model as the organizations that fund basic research in the United States, they use a peer review system. The grant applications are sent to other scientists for review and ranking with a separate committee allocating the money.

SEN. FRANKLIN In regard to the money being returned, where is McLaughlin right now? **Dr. Coffin** We are doing cash repayments. We don't sell anything, any money we get back is in the form of royalties from licensing fees or reimbursement of expenses. We don't sell mice, we only recover expenses. By law we cannot make a profit.

CHAIRMAN SWYSGOOD Why are we doing away with MSTA? **REP. JOHNSON** The program is flawed. We have taken money from the coal trust with a simple majority vote, loaned it out and said pay it back to us anyway you can. The money generated by the university system goes back to the university system, it doesn't come back to the coal trust. In addition, we have 3 or 4 companies that might make it for us in the venture capital business. They haven't had any seed capital in the last two years because we turned that into mezzanine financing in the last session.

CHAIRMAN SWYSGOOD If this is flawed, why didn't you address the flaws instead of doing away with the program? **REP. JOHNSON** Here is a letter from **Mr. Marchi**, who testified as an opponent today. **(EXHIBIT #12)** These are not fixable flaws, you need to decide whether state government should be in this kind of business. You can offer research and development by some of the ways we've suggested. Page 11, section 16 requires a three-quarters vote to write off the $9.35 million, we did not get that vote on the House floor.

SEN. FRANKLIN What would be the best way to effect change within the structure of MSTA? **Mr. Poole** As I testified earlier, DOC is in reluctant support of this bill. With MSTA sunseting on June 30, 1997 there would not be anyone managing the portfolio, therefore someone needs to do it. An easy way to fix the bill is

to change the sunset date to 1999. Venture capital investing is a risky business and I'm not sure there is anything structurally wrong with MSTA. You need to make the decision to change the sunset for MSTA or move the portfolio to the Board of Investments for management purposes. **SEN. FRANKLIN** I think there are some functional issues that could be worked on and I would hope DOC or the board would be open to working out the kinks that do exist.

SEN. TAYLOR Are the universities going to pay back the loans? **Dr. Crofts** We have been paying back the loans and that is our commitment.

{Tape: 2; Side: B; Approx. Time Count: 9:25; Comments: None.}

Closing by Sponsor:

REP. JOHNSON I did not know this bill was written by anyone else, that this was an MSTA bill and I refer you to the date on the bill. They asked me to change the sunset to 1999 and it didn't make sense to do this. I think MSTA is technically flawed. They don't want to be an advisory board, they want to make loans. They don't have any money to make loans, there is no reason why they shouldn't work with DOC if they are truly interested in what happens to these loans. The two venture capital companies have invested only $400,000, there doesn't seem to be a big demand for venture capital. I think we should get ourselves out of this business or into it. I agree that a research and development program is needed and voted for those bills. You need to consider carefully what you are doing here, don't keep the mistake going.

{Tape: 2; Side: B; Approx. Time Count: 10:11; Comments: None.}

EXECUTIVE ACTION ON HB 567

Motion: **SEN. BECK MOVES HB 567 BE CONCURRED IN.**

Discussion: **SEN. DARYL TOEWS** I can live with the health insurance and training in this bill. I don't think we have the obligation to put retirement money in for people who have been laid off.

SEN. CHRISTIAENS How many people have been involved through the RIF program over the last two years and what have the costs been? **Mr. McCullough** There were 71 people involved with the retirement portion of the program. The agencies have to plan for all portions of this in their downsizing and it is in their existing budgets.

SEN. CHRISTIAENS Is there a way to find out the impact this has had on the General Fund over the last biennium? **Mr. McCullough** We'd have to research that information and get it back to you, I don't see a quick way to get that to you. **CHAIRMAN SWYSGOOD** I would assume with 71 people taking advantage of the retirement

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 5
DATE 4/9/97
BILL NO. HB578

Rebecca W. Makurin
5 West Cleveland
Bozeman, MT 59715

April 9, 1997

Senator Chuck Swysgood
Senate Finance Committee
Montana Legislature
Helena, MT 59620

Dear Senator Swysgood:

Thank you for allowing me the opportunity to share with you and your committee the success of the Montana Science and Technology Alliance.

MSTA was created in 1985 to provide for venture capital and early stage financing for technology-based companies and for research and development projects with commercialization potential. Both activities were aimed at diversifying the state's economy in the high technology field. Over $23 million dollars from the Permanent Coal Tax Trust have been invested in these activities.

After considerable effort by the staff and Board of MSTA, MSTA now self-funds its administration, has a revolving fund from loan repayment which it can reinvest, and has the following record of success of which it is proud:

Research and Development Program has provided for:

Jobs created	**247**
Leveraged Funds	**$115.4 mill**
MT Private Capital Network Funds Placed	**$ 1.05 mill**
MT Business Connections Clients Served	**5,500**
Collaborative Projects - MUS and MT Businesses	**31**
Centers of Excellence (work with companies)	**5**
Medical Research Institutions supported - 2	**$ 3.0 mill**

Seed Capital Program has provided for:

Technology-Based businesses	**14**
Private Venture Capital Partnerships	**2**
Mezzanine Companies	**3**
Jobs	**275**
Wages	**$ 27 mill**
Leveraged Funds	**$ 149 mill**

A few specific examples of our success are:

1) **Last month MSTA sold one third of our shares (total investment of $1.2 million) in Mycotech and recouped almost our entire investment ($1.16 million).** Mycotech, Inc. in Butte employees approximately 40 people, recently closed a $7 million private placement of out-of-state money and say that they stayed in Montana only because of the MSTA investment.

2) Ultrafem in Missoula is now publicly traded at almost four times MSTA's purchase price. The company employs over 100 people in Missoula and is looking to expand. They say they would not have located in Montana but for the MSTA investment.

3) Life Resonances, an R&D investment, recently paid the entire balance of its loan, plus it will continue to pay royalties for 10 years. This "bone healing" technology emanated at MST and is now providing for better lives for thousands of patients.

4) MSU's taxol technology, supported by MSTA R&D funds, is licensed and may soon provide for a less expensive alternative for treating breast and ovarian cancer.

In short, MSTA has created over 500 jobs, funded two private venture capital companies, self-funds its administration, has leveraged over $264 million and will completely pay back the investment the State made in this effort.

Continued support for Research and Development and continued efforts in the seed capital area are critical to the future of Montana and its economy. We urge you to extend the sunset date for MSTA until June 30, 1999. We ask for no additional money, but merely that we be allowed, per current statute, to reinvest earnings.

Respectfully,

Rebecca W. Mahurin, Chair
Montana Science and Technology Alliance

SCIENCE AND CLAIMS
EXHIBIT NO. 6
DATE 4/9/97
BILL NO. HB578

Montana Science and Technology Alliance 1997 Biennial Report

Exhibit # 6 HB578
Booklet
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

...SE AND CLAIMS
EXHIBIT NO. 7
DATE 1/16/97
BILL NO. HB 378

KISS
Keep It Simple Systems

32 South Ewing • Suite 330
Helena, Montana 59601 USA
(406) 442-3434 • Fax (406) 457-0460
e-mail: solarinfo@wildwestweb.com
online: http://wildwestweb.com/

November 26, 199(

Governor Marc Racicot
State Capital Building
Helena, MT 59620-0801

Dear Mr. Racicot,

I write to you regarding the Montana Science & Technology Alliance, and the future of that organization. As you may know, we received an injection of capital from MSTA in May of this year. The staff at MSTA has been extremely helpful in a number of ways — they have helped us find other investment sources, coached us on good ways to approach such sources, and given us valuable input on the structuring of the company and preparation of our business plan. Dave Desch and Anne Welz have been ever present, and ever helpful in all aspects of their jobs, and their advice to us. These are valuable people that the State of Montana should try to keep in some type of economic development roll, regardless of MSTA's fate.

That infusion of working capital has allowed us to further develop our products, gain additional distribution and sales opportunities, and hire up to 5 new employees. In short, the monies brought in to our company from the Science & Technology Alliance helped tremendously in keeping us afloat, and expanding our business.

I feel that the state of economic development in Montana is less than optimal, and that the state should consider revising the MSTA program and continuing it in some fashion. It will be very hard for Montana to move away from an extraction based economy if we do not provide some sort of high-risk, venture capital type funding sources for other small businesses like ours.

Although MSTA currently operates under very demanding terms, the concept of it's mission is valid and should be continued in some fashion. In today's economy, it is darn near impossible for small, technology based, companies to get a foothold without some alternative to bank funding being available.

I would recommend that your staff take a good hard look at the MSTA program, and what alternatives would be left for companies such as ours should MSTA be cancelled. It's already a herculean task to start a small company in Montana, please don't take away our only source of "speculative" funiding!

Best regards, and wishes for many sunny days

Jerry Spencer
President/Marketing Director

11/26/96

NURTURE, Inc.
The GREEN Chemistry Company

5840 Expressway
Missoula, Montana 59802
TEL (406) 728-0250
FAX (406) 728-0251

November 25, 1996

Governor Marc Racicot
P.O. Box 200801
Helena, MT 59620

Dear Marc:

It is my understanding that you are likely to support legislation which would effectively dissolve the Montana Science & Technology Alliance ("MSTA"). This is apparently driven by the belief that venture funding is best left to the private sector. Although Nurture has been a beneficiary of the MSTA program, I would have to say that, *philosophically*, I tend to share the same belief.

Pragmatically, though, I have evolved toward a different view. Quite simply, Nurture would never have survived without the support of MSTA. Montana is a difficult environment in which to raise investment capital, largely because it does not lie within a traditional geographic territory for the mainstream investment community. Working with MSTA, we were initially able to develop the company's technology and prospects to a point where we could finally attract the major investment capital required to launch manufacturing and sales. Had it not been for the shepherding of MSTA, we would never have survived the early, vulnerable stage of our development.

I suspect that the Montana Private Capital Network and the two in-state venture funds are likely to be much less effective than MSTA. Unless there have been changes which I am unaware of, the in-state funds are somewhat capital constrained. And, our experience with the Network was frustrating at best. (Perhaps, though, it has improved since its inception.)

Although Nurture has not yet become a well-established business, along the way we have received the benefit of approximately $15 million in investment capital, most of which came from out-of-state and most of which was expended in-state (with attendant economic multipliers for the state). This would not have occurred in the absence of the MSTA program.

To sum up, in the real world of attempting to build a grass-roots business in Montana, government sponsorship of seed capital is virtually essential. No doubt this is why so many other states have programs comparable to MSTA. For less-populated states, I suspect it is even more critical to maintain such a program.

I would be glad to discuss this matter more fully at your convenience.

Sincerely,

Dick Potter

Richard C. Potter, Ph.D.
Executive Vice President

Gateway Software Corporation

November 22, 1996

Governor Marc Racicot
P.O. Box 200801
Helena, MT 59620

Governor Racicot:

Recently, the Governor's Office announced its intentions to sponsor legislation that will dissolve the Montana Science and Technology Alliance (MSTA) as of July 1, 1997. As president of a Montana software company that owes its existence to the MSTA, I am writing this letter to urge you to reconsider this decision.

When Gateway Software Corporation was founded in 1989, venture capital was difficult to secure. The MSTA stepped in with vital seed money in 1990, a time when private investors were reluctant to back a start-up technology firm. With the MSTA's backing at this vital stage, Gateway Software Corporation was able to establish itself in the marketplace. Today, our company employs 17 full-time employees in the small town of Fromberg. Revenues are higher than ever before, and we are looking forward to success in the 21st century.

With the current economic climate, it is essential that state government continue to support the creation of high technology jobs in Montana. As the logging and mining industries continue to decline, technology firms offer the promise of high-paying jobs to the next generation of Montanans. If it is true that the greatest asset of Montana is its people, then surely it is our responsibility to create jobs that will allow native Montanans to remain in the state.

The MSTA has played an integral role in the creation of technology firms in Montana. To dissolve the Alliance now is certainly not in the best interest of the people of our great state.

Sincerely,

Richard A. Brown
President
Gateway Software Corporation

P.O. Box 367 / 10 S. Montana / Fromberg, MT 59029-0367 / (406) 668-7661 / FAX (406) 668-7665 / (800) 735-3637

MSE, Inc.
220 North Alaska
P.O. Box 4078
Butte, MT 59702
(406) 782-0463
FAX (406) 723-8328

November 29, 1996

The Honorable Marc Racicot
Governor of Montana
c/o Dr. Rebecca Mahurin, MSTA
Capitol Station
Helena, MT 59620

Dear Governor Racicot:

I am writing to express a few thoughts in regard to financing for technology development in Montana in general, and specifically in relation to the Montana Science and Technology Alliance (MSTA). First of all, I would like to again express my appreciation for your confidence in appointing to me to your Task Force on Research and Development. While I recognize that the subject matter of the Task Force and the discussion about MSTA are not intended to be directly related, it seems that there are some significant common considerations.

First of all, let me point out that I believe support for our research institutions is critical, especially as it is necessary to leverage significant federal commitments to Montana; we must find the resources to keep Montana on the playing field in relation to national research priorities. I should also say, however, that I think we would be remiss to ignore the possible connection between research funding and potential benefit to the state's technology-based commercial economy. When the MSTA was first established in the mid 1980's, research financing was its top priority. Over the years it has been the vehicle through which the state channelled funds to worthy projects such as the McLaughlin Research Institute in Great Falls; the Deaconess Research Institute in Billings, the Center for Biofilm Engineering at MSU in Bozeman, and to the smaller scale Centers of Excellence in the university system.

However, in the early days of the program, MSTA's board members and staff were motivated to suggest the establishment of the Seed Capital financing program because there was perceived to be significant demand from the private sector for "venture capital" to finance technology commercialization, and because Montana needed to match similar programs offered by other states. Through this time, we all became convinced that the two types of programs, research funding and commercial technology development financing, should be interrelated in a coordinated program with generally common goals. Since then, state government has apparently become convinced that, because little investment activity has been completed under the Seed Capital program, there is no need for it.

I cannot agree with the above conclusion. First of all, if there is a lack of investment activity, it could be the result of a number of factors, both external and internal to the program itself. Second, if we have concluded that the state of Montana cannot produce opportunities worthy of investment, it does not seem that our first response should be to abandon the effort. Science and technology-based entrepreneurial development is absolutely critical to Montana's development and state government can play a positive role in advancing our chances for long term success. If there are problems with the program, we should first evaluate them and determine if a solution is within our reach. If there are opportunities to coordinate research and development financing with state sponsored seed capital, and with the investments the state has made in private venture capital companies (including employee pension funds), then we should discuss the opportunities.

From the perspective of my company and the other developing science-based commercial enterprises in Montana, this is not the time to allow our hard won momentum to be lost. MSE and its affiliates need access to responsible risk capital - so do other Montana businesses. I do not believe our investment climate is sufficiently mature for us to be satisfied with our current status.

I hope that you and your advisors will give serious consideration to the views of those of us who would like to maintain Montana's commitment to both sides of our state's science-based future. I would be delighted to continue this discussion with you in whatever capacity you think best.

Sincerely,

Donald R. Peoples
President and CEO

MYCOTECH
CORPORATION

December 3, 1996

Marc Racicot
Governor of the State of Montana
Helena, Montana 59620

Dear Governor Racicot:

Promoting economic growth is challenging state and city administrations all over the United States. The recent success Mycotech has enjoyed has generated numerous inquires and overtures from various city and state agencies charged with promoting economic growth in their area.

In 1991, when Mycotech was first starting, any sort of funding was difficult to find. Ultimately with the help of MSTA, we were successful in attracting venture capital. We have raised over $16 million in venture funding since 1991. With that $16 million and several loans, we have registered two insecticide products with the US EPA, have several others in the pipeline, established sales distribution for the products in the United States, are working on registration and distribution outside of the United States, developed a proprietary manufacturing process using agricultural products grown in Montana, and are completing a state-of-the-art manufacturing facility in Butte. (In comparison, it typically takes a chemical company in excess of $100 million and seven years just to register a new chemical insecticide. We have used our money well.)

Today Mycotech is poised on the brink of dynamic growth. Our products will be made in Montana but sold all over the world. However, we would not be in Montana at all if not for MSTA. The first venture capital firms interested in Mycotech, wanted to move the Company closer to their operations. MSTA's investment and presence close to Mycotech provided the comfort level necessary for the other venture investors to leave the Company in Montana. (Potential new investors continue to ask why we are located in Montana and would we consider moving.)

Venture investors know start-ups, particularly technology based start-ups, frequently need business and managerial help, sometimes on a daily basis. Having the business close to the venture firm allows investors the frequent contact to provide necessary help and/or oversight and maybe more importantly, increases the overall comfort level of the investor. (Many venture firms have geographical restrictions on their investments for just those reasons.)

529 E. Front Street, P. O. Box 4109, Butte, MT 59702 (406) 782-2388 FAX (406) 782-9012

The State needs to identify the resources which can be used to attract and grow new business. Montana needs to manage the promotion of those resources, provide incentives, and coordinate private and public efforts.

I believe MSTA has and can continue to provide a valuable role in economic development in Montana. However no one entity can provide for economic growth. There needs to be a coordinated effort.

The next time you are in Butte, please stop and visit. I would like to show you what Mycotech is all about, and hopefully give you a glimpse of the future.

Sincerely,
Mycotech Corporation

Robert Kearns
President

DORSEY & WHITNEY LLP

MINNEAPOLIS
WASHINGTON, D.C.
LONDON
BRUSSELS
HONG KONG
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JOHN W. MANNING

NEW YORK
DENVER
SEATTLE
FARGO
BILLINGS
MISSOULA
GREAT FALLS

December 2, 1996

Governor Marc Racicot
State of Montana
State Capitol Building
Helena MT 59620

Dear Governor Racicot:

This letter is being sent in support of the Montana Science and Technology Alliance ("MSTA") and its various programs, especially the seed capital program.

In my experience as a corporate and securities lawyer involved in advising emerging companies, I strongly believe that the MSTA has worked successfully to fill a large void in the financing of start-up and developing companies in Montana. Historically, Montana has had few companies financed by venture capital firms or institutional investors. Until recently, there has been no Montana-based venture capital firm. There are no small business investment companies (SBIC's). There are no investment banking firms with interest in early stage financings. While there are a few individuals, or angels, interested in investing in emerging companies, companies have had difficulty locating those potential investors in such a large state.

The MSTA has not only identified and provided financing for some of the State's best emerging companies, it has also served as a de facto clearing house of information for emerging companies. Emerging companies cannot develop without financing and nurturing. Despite constitutional, legislative and political restraints, the MSTA has served and continues to serve this role.

It is important that any decision with respect to the future of the MSTA be based on accurate information. I believe the MSTA and its programs have successfully served their purpose, despite considerable odds against them. Thank you for your attention.

Very truly yours,

John W. Manning

JWM:dk-g

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 8
DATE 4/9/97
BILL NO. HB 578

April 9, 1997

Jon Marchi's testimony on HB 578, "An Act Eliminating the Montana Board of Science & Technology Development ..."

My name is Jon Marchi. I reside near Polson, MT and operate a diversified cattle and farming operation. In addition, I serve as President of the Montana Private Capital Network, a non profit organization (now 4 years old) dedicated to helping Montana businesses find equity capital for start-up or expansion purposes. I also serve as Chairman of the Glacier Venture Fund one of only two active venture capital funds in Montana. Finally, I have served for some time as a director and chairman of a publicly held company headquarters in Billings with about 80 employees.

As a small businessman and as a citizen of our state I oppose this bill.

I oppose the bill for the following reasons:

. MSTA is now eleven years old and is now just starting to pay off. The recent Mycotech example is a good one - all the state's money back and still ownership of two-thirds of the original investment.

. MSTA is now self sufficient. It has actually been self funding since 1995. I well understand that the revenue projections going from $1,429,000 in FY97 to $1,900,000 in FY 98 will be a great boon to the general fund but it does not do much for businesses in Montana who need equity capital to expand. Let's not kill the goose who is now starting to lay the golden eggs.

. With MSTA's passing there will be no source of capital devoted to higher risk technology orientated equity investments in Montana. The venture fund that I am affiliated with will likely not replace MSTA's role in making these kinds of investments. We will take up some of the slack but by no means all of it. Likewise, the other venture fund in Montana needs an investing partner such as MSTA to help spread those higher risks.

. With MSTA's demise we begin to dismantle the infrastructure that the state has so carefully nurtured over the past several years. It seems that we will then be going in the opposite direction from the rest of the country and the world. To create high paying non minimum wage jobs requires a strong technology and/or education component. MSTA has started to successfully help create those kinds of jobs for Montanan's through its funding of companies such as Ultrafem in Lolo, Gateway Software in Fromberg, Mycotech in Butte, Pasta Montana in Great Falls and Safe Shop Tools in Missoula.

. I well understand that MSTA has some structural problems. I served on its board in the early years. If you continue with MSTA those problems need to be corrected in order to create a top notch program for Montana. But those problems can be corrected. I wrote a letter to the Governor in late November last year discussing some of MSTA's flaws and concluded by saying: "Ideally, it would be great if you could be convinced to keep MSTA alive and to fix its flaws and the negative perception it has seemed to have acquired". Instead of killing the program now please consider putting it on hold for two years while an in depth analysis is done. Those recommendations could then be made well in advance of the 1999 legislative session.

. If you transfer the existing portfolio to the Board of Investments and then kill the program please consider the following:

How can a state or a state agency manage an existing technology orientated equity venture capital portfolio ...
...when it is no longer in the business,
...can't make subsequent investments,
...can't sit on the boards of those companies it has invested in,
...no longer has the personnel and administrative infrastructure to help these companies continue to grow (because it is in a caretaker only status)?

Thanks for you time. I know you all have a tough, thankless job and I appreciate your efforts.

SCIENCE AND CLAIMS
EXHIBIT NO. 9
DATE 3/9/91
BILL NO. HB578

State of Montana
Department of Commerce
[illegible]
Helena, Montana 59620
Telephone (406) 449-2778
FAX (406) 442-0788

Montana Science & Technology Alliance

Marc Racicot, Governor

George A. Carlson, Ph.D.
Director
McLaughlin Research Institute
1520 23rd Street South
Great Falls, Montana 59401

Dear George:

At its meeting on July 27 the Montana Board of Science and Technology Development voted to provide the McLaughlin Research Institute with a $500,000 research and development loan. In addition to the standard terms and conditions included in all research and development financings, the loan to the Institute will include the following terms and conditions:

1. MSTA will make a $500,000 loan from the Permanent Coal Tax Trust to the McLaughlin Research Institute for Biomedical Sciences.

2. The Institute shall pay no indirect costs from the MSTA's funds.

3. The MSTA funds will be matched on at least a dollar-for-dollar basis in cash received by the Institute exclusive of the $5 million federal construction grant funds and the $2 million state grant funds.

4. The first $100,000 of MSTA funds shall be disbursed to the Institute upon execution of the financing document and receipt of documentation of appropriate matching funds.

5. The Institute shall develop and its board adopt an intellectual property management policy prior to release of any subsequent MSTA funds. Failure of the Institute to enforce its intellectual property management policy shall be deemed a material default of the financing agreement that triggers the loan's default provisions.

6. The Institute shall develop a commercialization plan, also prior to release of any subsequent MSTA funds, that incorporates (a) the Institute's intellectual property management policy, (b) an assessment of existing and future technology for commercialization potential and (c) a plan for the Institute to market its technology for commercialization.

7. The Institute shall develop a twelve- to eighteen-month budget and milestones with a term beginning on July 1, 1993 for use of the MSTA and matching funds on research project(s) with commercial potential as identified by the Institute's scientific advisory committee. If the budget and milestones are not completed prior to execution of the financing agreement and the initial disbursement of MSTA funds, they shall be appended to the financing agreement prior to any subsequent disbursement of MSTA funds.

8. After the initial disbursement upon execution of the financing document, the MSTA funds will be disbursed on a quarterly reimbursement basis in accordance with the budget and milestones upon receipt of appropriate documentation of expenditures in accordance with the project budget, receipt of documentation of acceptable match, and compliance with the financing agreement.

9. a. In consideration of the commitment of the Board, the Institute agrees to repay the loan at the rate of five percent of all annual gross revenues from royalties on all patent rights, licensing revenues, and all other commercialization activities including those revenues received from Lewis and Clark Biologicals, Inc., Big Sky Bioscience, Inc., Life Sciences, Inc., and any current or future business partner, joint venture partner, or wholly- or partially-owned subsidiary until the Board has received two and one-half times the loan amount or $1,250,000.

   b. In further consideration, the Institute agrees to make minimum annual payments to the Board to retire the loan according to the following schedule:

Payment Due Date	Minimum Annual Payment
June 30, 1994	5 percent of commercialization revenues
June 30, 1995	5 percent of commercialization revenues
June 30, 1996	$10,000
June 30, 1997	$15,714
June 30, 1998	$21,428
June 30, 1999	$27,142
June 30, 2000	$32,856
June 30, 2001	$38,570
June 30, 2002	$44,824
June 30, 2003	$50,000

June 30th of each subsequent year until repayment of $1,250,000 is completed	$50,000

Funds identified for repayment will first be obtained from all patent, licensure, corporate fee and royalty income obtained by the Institute. If such income is inadequate to provide the entire annual repayment amount, the remainder of the commitment shall come from other sources. This provision in no way limits the maximum annual payment to the Board by the Institute from patent, licensure, corporate fee and royalty income or other commercialization activities.

c. In final further consideration, the Board shall hold a first lien on the Institute's equipment as collateral until repayment of the $1,250,000 has been completed.

10. The Institute shall reserve a seat on its Board of Trustees and the board's Executive Committee for a representative of MSTA.

11. The Institute shall reserve an observer's seat on the Institute's scientific advisory committee for a designee of MSTA.

We will be meeting with our legal counsel to write language necessary to revise the draft financing document provided to you earlier. Once developed, we will provide you copies.

Please thank David Crum for attending the July 27 meeting of the MSTA Board. His presentation and answers to the Board's questions proved valuable in the Board's decision-making process.

Please also accept our thanks for the invitations to attend the Institute's open house and dinner on July 19th. We enjoyed the opportunity to tour the Institute's fabulous new facility and dine with its distinguished guests. So that the MSTA Board may better appreciate the Institute's new research facility, we would be most pleased if the Institute would consent to host the MSTA Board's September 21, 1993 meeting in Great Falls. Please let us know if this would be convenient.

We look forward to continuing our partnership with the McLaughlin Research Institute and supporting its research efforts. We remain interested in discussing the financing with you at your earliest convenience.

Sincerely,

Elinor W. Edmunds

Elinor W. Edmunds
Research and Development Manager

xc: Ardith Aiken, Chair, Board of Trustees, McLaughlin Research Institute
Senator Eve Franklin
Senator Steve Doherty
Representative William Wiseman
Jon Noel, Director, Department of Commerce
Ray Tilman, Chair, Montana Board of Science and Technology Development

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 10
DATE 4/9/91
BILL NO. HB578

MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT

FINANCING AGREEMENT

THIS FINANCING AGREEMENT is entered into as of the _____ day of _____, 1993, by and between the [redacted], Department of Commerce, 46 N. Last Chance Gulch, Suite 2B, Helena, Montana 59620 (the "Board") [redacted], 1520 23rd Street South, G[redacted]").

WHEREAS, the "Montana Science and Technology Financing Act" (Chapter 316, Montana Session Laws), was signed by Governor Stan Stephens on March 24, 1989; and

WHEREAS, the "Montana Science and Technology Financing Act" (Chapter 316, Montana Session Laws), was amended in 1991 (Chapter 594, Montana Session Laws). and signed by Governor Stan Stephens on April 24, 1991, and specifically provided a funding source for the Montana Board of Science and Technology Development to use in making research and development project loans; and

WHEREAS, the purpose of the science and technology development program is to strengthen and diversify Montana's economy by facilitating a public-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a changing economic structure and to create new jobs, and expand business opportunities; and

WHEREAS, the Board is authorized to provide financial assistance through loans to nonprofit and for-profit research institutions, businesses and industries, educational institutions and other persons concerned with innovative scientific and technological research, development and commercialization located in or planning to locate in the state of Montana in

rder to foster and support scientific and technological research, development nd education and to promote the development of technology intensive usinesses, programs, and activities;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Recipient and Board agree as follows:

A. PERFORMANCE

1. Proposal.

(a) The Recipient agrees to perform in accordance with the project proposal (the "Proposal"). A copy of the Proposal is attached hereto, marked Exhibit A, and incorporated herein. The Proposal and amendments thereto, if any, are referred to in this Agreement as the "Project."

(b) The Recipient agrees to provide the funding, personnel, facilities, equipment, know-how, and other resources to the Project as described in the Proposal.

(c) In the event there may be more than one Recipient, the Recipients agree to enter into a separate agreement among themselves, specifying their respective duties and obligations with regard to the Proposal. A copy of said agreement must be furnished to the Board for its review and written approval prior to execution. In such agreement, one Recipient shall be designated as being primarily responsible for managing the Project and for performing the reporting obligations set forth in this Agreement; provided, however, that each of the Recipients shall be jointly and severally responsible in said agreement for ensuring that all activities required of it for the completion of the Project and compliance with this Agreement are performed in their respective project areas.

(d) The Recipient agrees to promptly notify the Board of the occurrence of any of the events enumerated in Paragraph D.1.

2. Budget. The Recipient agrees to perform within the 12- to 18-month budget (the "Budget") beginning on July 1, 1993 for use of the Board and matching funds for research project(s) with commercial potential as identified by the Recipient's scientific advisory committee, approved by the Recipient's board of trustees, accepted by the Board and as set forth on the following three pages.

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SB 0242/04

SENATE BILL NO. 242

INTRODUCED BY CRIPPEN, D. BROWN, GRINDE,

THAYER, WILLIAMS

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FUNDING FROM THE IN-STATE INVESTMENT FUND FOR RESEARCH AND DEVELOPMENT PROJECT LOANS; PROVIDING FOR MEDICAL FACILITY RESEARCH AND DEVELOPMENT PROJECT LOANS; REQUIRING AT LEAST THREE MEMBERS OF THE BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO HAVE KNOWLEDGE OF EARLY STAGE FINANCING OF PRIVATE BUSINESSES; CHANGING MATCHING FUND REQUIREMENTS FOR RESEARCH AND DEVELOPMENT PROJECTS; REQUIRING THE UNIVERSITY SYSTEM TO ASSESS INTELLECTUAL PROPERTY MANAGEMENT; AMENDING SECTIONS 2-15-1818, 17-6-308, 17-6-310, 90-3-101, 90-3-102, AND 90-3-301, AND 90-3-305, 90-3-524, AND 90-3-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1818, MCA, is amended to read:

"2-15-1818. **Montana board of science and technology development -- allocation -- composition -- quasi-judicial powers.** (1) There is a Montana board of science and technology development. The board is allocated to the department of commerce. The department shall select, prescribe the duties for, and supervise staff to administer board activities.

(2) The board consists of nine members appointed by the governor as prescribed in 2-15-124.

(3) In making appointments to the board, the governor shall consider people with extensive interest and experience in science and technology and the application of such interest and experience to economic development in Montana.

(4) The membership of the board must include:

(a) at least two three members with knowledge of early stage financing of private businesses;

(b) at least one member with expertise in applied technology development; and

(c) at least five members from the private sector.

(5) The board is designated a quasi-judicial board for purposes of 2-15-124."

Section 2. Section 17-6-308, MCA, is amended to read:

"17-6-308. **Authorized investments.** (1) Except as provided in subsection (4), the Montana in-state investment fund must be invested as authorized by rules adopted by the board. For purposes of this section, "investment" includes the guaranty of loans or bonds in consideration for a fee in lieu of the actual acquisition of such the loans bonds.

(2) The board may use the in-state investment fund to

Montana Legislative Council

EXHIBIT NO. 11
DATE 1/27/07
BILL NO. HB 278
SB 242
SENATE FINANCE AND CLAIMS
THIRD READING

guarantee loans or bonds issued under the provisions of 17-5-1501 through 17-5-1529, Title 17, chapter 5, part 16, or Title 90, chapter 7. Each guaranty must be given in consideration of a fee. The fees must be paid to the board. The guaranty must provide directly or by separate agreement that the board is fully subrogated to the rights of the obligee under the loan or bond. The board shall by rule establish the maximum ratio between guaranty funds available and loans or bonds to be guaranteed. The board may covenant in bond issues to maintain ~~such~~ the ratio. Unless bonds issued to finance a project are secured by a common capital reserve account and a common guaranty fund, the maximum amount of the guaranty authorized by this section may not exceed ~~$3,000,000~~ $3 million with respect to the bonds or loans to finance the project.

(3) The board may make loans from the in-state investment fund to the capital reserve account created pursuant to 17-5-1515 and the guaranty fund created pursuant to 17-5-1520 to establish balances or restore deficiencies therein. The board may agree in connection with the issuance of bonds or notes secured by such account or fund to make such loans. Loans must be on such terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1529, subject to the prior pledge of

the revenues to the bonds and notes.

(4) The board shall allow the Montana board of science and technology development provided for in 2-15-1818 to administer $7.5 million of the in-state investment fund for seed capital project loans and $5.1 million of the in-state investment fund for research and development project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1994, for seed capital project loans and ~~June 30, 1993~~ for research and development project loans. Until ~~such time as~~ the Montana board of science and technology development makes a loan pursuant to ~~those~~ the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201."

NEW SECTION. **Section 3.** **Allocation of funds.** ~~"~~THE PROVIDED THE LOANS CONTAIN THE REPAYMENT REQUIREMENTS SET FORTH IN 90-3-522 AND 90-3-524, THE $5.1 million of the in-state investment fund to be used for research and development project loans is allocated as follows:

(1) $600,000 to meet state matching fund requirements for the national science foundation awards to the center for interfacial microbial process engineering~~, PROVIDED THE LOAN CONTAINS THE REPAYMENT REQUIREMENTS SET FORTH IN 90-3-522 AND 90-3-524~~;

(2) $3.5 million for loans relating to but not limited

to the centers of excellence program and the Montana entrepreneurial center and to meet state matching fund requirements for the national science foundation's experimental program to stimulate competitive research; and

(3) $1 million for medical facility research and development project loans provided that:

(a) a loan may not be less than $200,000 or more than $500,000; and

(b) a dollar-for-dollar matching requirement from federal or private sources is required.

SECTION 4. SECTION 17-6-310, MCA, IS AMENDED TO READ:

"17-6-310. No direct loans. (1) The state may not use this revenue to make direct loans.

(2) ~~No--money--from-the~~ The Montana in-state investment fund may not be used by the board of investments to make direct loans to individual borrowers. The purchase of debentures issued by a capital company and loans or portions thereof originated by a financial institution that are sold to the trust are not direct loans."

Section 5. Section 90-3-101, MCA, is amended to read:

"90-3-101. Short title -- findings -- purpose. (1) This chapter may be cited as the "Montana Science and Technology Financing Act".

(2) The legislature finds and declares that:

(a) it is the policy of the state of Montana to promote

the health, safety, and general welfare of all the people of the state;

(b) this policy will be furthered through strengthening and diversifying the state's economy by facilitating a public sector-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities;

(c) this strengthening and diversification will be fostered by assisting in the acceleration of development of technology in the state through participation with the private sector in the financing of science and technology development projects that have significant potential for commercialization in Montana;

(d) the in-state investment fund created through adoption of Initiative Measure No. 95 by the voters of Montana in 1982 is the appropriate source for providing financing programs for the development of new and expanding businesses in Montana; and

~~(e) the--Science--and-Technology-Development-Board-Seed Capital-Bond-Act-contained-provisions-that-were-found-to--be unconstitutional--by-the-Montana-supreme-court;-and-the-51st legislature-of--the--state--of--Montana--must--remedy--those defects-through-legislation;-and~~

~~(f)~~ the Montana science and technology development

board has demonstrated success in forging a partnership among the private sector, the university community, and government, and this success should be continued through an ongoing legislative commitment to the board's programs.

(3) The purposes of this chapter are to:

(a) strengthen and diversify Montana's economy by establishing a public-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a transforming economic structure and to create new jobs and expand small business opportunities;

(b) provide a funding source for the board to make seed capital project loans;

(c) provide a mechanism for the board to use in making seed capital project loans; and

(d) provide a mechanism and a funding source for the board to use in making research and development project loans~~;--the--funding--source--of--which--will-be-provided-by separate-legislation~~."

Section 6. Section 90-3-102, MCA, is amended to read:

"90-3-102. Definitions. As used in this chapter the following definitions apply:

(1) "Act" means the Montana science and technology financing act.

(2) "Board" means the Montana board of science and

technology development provided for in 2-15-1818.

(3) "Company" means a firm, partnership, corporation, association, or any other entity authorized to conduct business in Montana.

(4) "Convertible debenture" means a debenture convertible into stock under certain conditions by any individual or company. The debenture may not be converted by the board.

(5) "Debenture" or "note" means a writing or certificate issued as evidence of debt.

(6) "Department" means the department of commerce created in 2-15-1801.

(7) "Expansion capital project" means a science and technology development project undertaken to enable a company to expand its manufacturing and marketing activities in order to move its products or services into new markets or to expand existing markets.

(8) "Innovative technology" means the involvement of a product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

(9) "Matching funds" means the funds received in cash by the science and technology development project loan

recipient from nonstate-appropriated sources and committed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the board for use in the science and technology development project.

(10) "Medical facility research and development project" means a research and development project designed to advance the development and operation of facilities that concentrate on fields of medical research involving advanced technology applied to national medical concerns through the financing of personnel, equipment, and operating costs with the goal of establishing the facilities as enduring research organizations in Montana.

~~(10)~~(11) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the board.

~~(11)~~(12) "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit, that is associated with or involved in commercial activity.

~~(12)~~(13) "Research and development project" means a science and technology development project that falls into the category of research capability development, applied technology research, or technology transfer and assistance.

~~(13)~~(14) "Research and development project loan" means a

science and technology development project loan entered into between the board and a loan recipient for a research and development project.

~~(14)~~(15) "Science and technology development project" means either a seed capital project or research and development project designed to discover, develop, transfer, utilize, or commercialize existing or new, innovative technology in order to strengthen and enhance economic development in Montana.

~~(15)~~(16) "Science and technology development project loan agreement" or "loan" means an agreement entered into between the board and the loan recipient of a seed capital project loan or a research and development project loan that:

(a) creates a debt relationship between the parties;

(b) provides for a financial return to the board;

(c) provides economic development potential to the state; and

(d) contains the applicable provisions and terms required by this chapter.

~~(16)~~(17) "Seed capital project" means a startup capital project or expansion capital project.

~~(17)~~(18) "Seed capital project loan" means a science and technology development project loan entered into between the board and a loan recipient for a seed capital project.

~~(18)~~(19) "Startup capital project" means a science and technology development project that assists a company in initiating commercial operations.

~~(19)~~(20) "State" means the state of Montana.

~~(20)~~(21) "Warrant" means an instrument issued by a corporation that gives a holder other than the board the right to purchase stock of a corporation either for a limited time or perpetually."

Section 7. Section 90-3-301, MCA, is amended to read:

"**90-3-301. Appropriation authority and funding -- matching funds.** (1) The board has authority to accept and expend all funds received by it as grants, donations, or other private or public income. These funds are statutorily appropriated as provided in 17-7-502.

(2) The appropriations and loans made to and by the board are in addition to and separate from general fund appropriations to the university system and other state agencies.

(3) A loan may not be made for a seed capital project for which matching funds have not been received. Matching funds are required prior to any expenditure of board funds for ~~research--and--development-projects-or~~ all seed capital projects. The board may accept as matching funds those received by the loan recipient within 1 year prior to the execution of the loan agreement. The board may require

additional matching funds, depending on the capital need and the degree of risk encountered in the ~~science-and-technology development~~ seed capital project.

(4) A loan may not be made for a research and development project for which matching funds have not been received unless the matching fund requirements are waived by the board pursuant to this section. Matching funds, when required, must be received before expenditure of board funds for a research and development project loan may be made. The board may waive the required match for up to 25% of the funding for research and development project loans if the board determines that the capital need and potential commercialization of the research and development project, in addition to its potential to strengthen the partnership between the public sector and private sector, warrant the waiver. The board may accept as matching funds those received by the loan recipient within 1 year prior to the execution of the loan agreement. The board may require additional matching funds depending on the capital need in the research and development project."

SECTION 8. SECTION 90-3-305, MCA, IS AMENDED TO READ:

"**90-3-305. Science and technology development account.** (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the science and technology development account:

(a) the payback of principal and earnings on a research and development project loan, made from a source other than the Montana in-state investment fund, executed under this chapter; and

(b) all payback of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989."

SECTION 9. SECTION 90-3-524, MCA, IS AMENDED TO READ:

"**90-3-524. Research and development project loan agreement -- specific requirements -- payback.** In addition to the loan agreement provisions described in 90-3-522, a research and development project loan agreement must be structured as contracted debt with the following terms:

(1) The agreement must include provisions calling for a payback of at least two times the original loan amount paid as a percentage of the income stream derived from the sale or other commercialization of products or processes developed with the board's financing. This percentage rate may not exceed 5%.

(2) The payback on a research and development project loan for a technology transfer and assistance project may be made pursuant to subsection (1) or may be realized in terms of indirect benefits related to the goals and criteria of

the program. No more than 10% of the board's annual allocation of research and development funds may be used for technology transfer and assistance projects. THE PAYBACK ON A RESEARCH AND DEVELOPMENT PROJECT LOAN FOR A TECHNOLOGY TRANSFER AND ASSISTANCE PROJECT MADE FROM THE IN-STATE INVESTMENT FUND MAY NOT BE REPAID IN TERMS OF INDIRECT BENEFITS."

SECTION 10. SECTION 90-3-525, MCA, IS AMENDED TO READ:

"**90-3-525. Deposit of payback -- seed capital and research and development project loans.** (1) The payback of principal and earnings on a seed capital project loan executed under this chapter or on a research and development project loan from the Montana in-state investment fund must be administered pursuant to section 17-6-306.

(2) The payback of principal and earnings on a research and development project loan from a source other than the Montana in-state investment fund must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305.

(3) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 for use by the board. The paybacks include all those received after

January 1, 1989."

NEW SECTION. **Section 11.** Intellectual property assessment. The university system shall conduct an assessment of its intellectual property management programs and policies. Based on the assessment, the board of regents shall consider the adoption of a system of intellectual property management that will provide a coordinated and effective method of meeting payback requirements for research and development project loans made to organizations, individuals, and other entities within the university system. The assessment must be coordinated with the Montana board of science and technology development, and a final report and recommendations must be presented to the board by January 1, 1992.

NEW SECTION. **Section 12.** Coordination instruction. If Senate Bill No. 26 is passed and approved, if it includes a section that amends 17-6-308, and if it includes amendments that replace references to the "in-state investment fund" with "permanent coal tax trust fund", then in [~~section 3 of this act, amending 17-6-308(4)~~], the code commissioner shall make a similar change CHANGES.

NEW SECTION. **Section 13.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part

remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 14.** Effective date. [This act] is effective on passage and approval.

-End-

SENATE BUSINESS AND CLAIMS
EXHIBIT NO. 12
DATE 4/9/97
BILL NO. HB 678

GLACIER VENTURE FUND

THE MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY

HELENA OFFICE
Alan D. Nicholson
P.O. Box 472
Helena, MT 59624
Phone (406) 443-2160
Fax (406) 443-2161

POLSON OFFICE
Jon Marchi
7783 Valley View Road
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Phone: (406) 883-5470
Fax (406) 883-3051

BY FAX AND MAIL

November 27, 1996

Governor Marc Racicot
State of Montana
PO box 200801
Helena, MT 59620

Ms. Linda Reed
Senior Economic Policy Advisor
Governor's Office
PO Box 200801
Helena, MT 59620

Dear Governor and Linda:

Thank you for individually taking the time with me over the past several weeks to discuss MSTA's future. It is personally sad for me to hear of its pending demise. I was one of MSTA's original director's appointed over eleven year's ago by then Governor Schwinden. In those days we split the board in two parts: seed capital and research and development. I was honored to be elected to serve as chairman of the seed capital committee for a few years. At that time we were making three to five seed capital investments per year and seemed to have more deal flow than we could handle. The committee remained the same for some time. We were particularly proud of the investments we made in Western Energy and Ultrafem . But we also made some mistakes. That is the nature of equity investing.

So what happened to MSTA? Why is it now on the block? I have been off the board for some time so am not privy to the day to day and month to month details. But I do know that from the beginning MSTA has had two serious structural flaws and one serious design flaw.

The original board attempted to fix both structural flaws over the course of a couple of legislative sessions without success. The first flaw is that one can't run any kind of organization with two bosses. Because the board has complete control over investment authority and responsibility and the DOC has complete authority and responsibility for the administration (including hiring and firing all the staff) of MSTA there is no clear chain of

command. If the board and DOC begin to argue with each other then the situation becomes untenable and unworkable.

The second major flaw is constitutional. The state cannot own equity interests in companies. We and others have attempted over the years to amend the constitution to allow certain state agencies to invest and own equities. The most recent attempt this fall would have allowed the Workers' Compensation Fund to invest a small portion of its reserves in equity securities. As we all know the effort failed at the polls. Frankly, I don't believe that this flaw can be overcome.

The major design flaw is that it is very difficult for MSTA to say no to an investment proposal from a Montana company without making people angry. State agencies (particularly economic development ones) are not supposed to say no. The people believe, and rightly so, that they are there to help. Unfortunately, a good venture capital equity investor says no about 95% of the time.

Ideally, it would be great if you could be convinced to keep MSTA alive and to help fix some of its flaws and the negative perception it has seemed to have acquired. But I'm a realist and after my conversation with Linda just over a week ago I have become even more of one. I also have a personal motive for trying to keep MSTA alive. The Montana Private Capital Network receives $5000.00 per year from MSTA's administrative budget to help fund continuing operations. MPCN runs on a tight and lean basis and receives only $25,000.00 per year in outside assistance. MSTA's loss would be material.

It has been said that you are considering taking the remaining MSTA investment funds and transferring them to the JIL program or a new state relending program. This may be a mistake. We have in Montana a multitude of debt programs available to our businesses. For example, the state already offers a micro business lending program, a CDBG loan program, a series of BOI programs and, of course, JIL. The federal government offers some extraordinary incentive loan programs including the now very popular Rural Development B&I program, the SBA 504 and 7A programs and the various federal relending arrangements. All of these are good programs but they are all debt programs. What Montana businesses need are equity programs not another debt program. The rule of thumb is that a rapidly growing business can only finance about 9% of its growth rate internally. If the business is growing faster than 9% it must find outside sources of capital. Not all of that capital can be debt.

If you are intent on sunseting MSTA, then please consider privatizing its functions for the long term benefit of our Montana businesses. The management of the existing seed capital program should be handled by the private sector such as the Board of Investments uses Brinson to manage its venture capital portfolio in its pension funds. However, in making that change it is important that the private sector firm or firms are active venture capitalists operating in Montana with add on investment capabilities.

Why should the state or a state agency attempt to manage an existing equity portfolio...
...when it is no longer in the business,
...can't make subsequent investments,
...is not allowed to sit on the boards of those companies it has invested in.
...has no real control of the investment because it is not allowed to convert its subordinated convertible debenture to equity and,
...most importantly, is severely limited in its profit potential because it has to sell the debenture to a converter.

The private sector venture capital firm will have none of these constraints. Assuming that an agreement is properly structured between the state and the firm the state will have significantly more upside potential in the existing seed capital portfolio and eventually a better return on its invested dollar.

Secondly, please consider amending the venture capital MSTA statute to allow up to a total of a $3,000,000 investment in each Montana venture capital company vs. $1,000,000 now. Each of these companies have already raised in excess of $1,000,000 from private investors. Require a one-half to one match in $500,000 increments for those venture capital companies that have already raised at least $1,000,000 privately. Such actions on your part would help insure the availability of equity capital for our Montana businesses. Those businesses could then stay on their growth track without the risk of being overly burdened with debt capital.

Thanks for taking the time to digest all this. I look forward to seeing both of you at the meeting on December 3.

Sincerely yours,

Jon Marchi

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE

ROLL CALL DATE 4/9/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHUCK SWYSGOOD, CHAIRMAN	✓		
SEN. TOM KEATING, VICE CHAIRMAN	✓		
SEN. LARRY BAER	✓		
SEN. TOM BECK	✓		
SEN. JIM BURNETT	✓		
SEN. B.V. "CHRIS" CHRISTIAENS	✓		
SEN. EVE FRANKLIN	✓		
SEN. LOREN JENKINS	✓		
SEN. GREG JERGESON	✓		
SEN. J. D. LYNCH	✓		
SEN. DALE MAHLUM	✓		
SEN. KEN MILLER	✓		
SEN. ARNIE MOHL	✓		
SEN. LINDA NELSON	✓		
SEN. MIKE TAYLOR	✓		
SEN. DARYL TOEWS	✓		
SEN. MIGNON WATERMAN	✓		

SEN:1997
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CS-09

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 4/9/97 BILL NO. HB 578 NUMBER hb057802.a05

MOTION: Amend - MSTA sunset date

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN		✓
SEN. LARRY BAER		
SEN. TOM BECK	✓	
SEN. JIM BURNETT		✓
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS	✓	
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM	✓	
SEN. KEN MILLER		✓
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR	✓	
SEN. DARYL TOEWS	✓	
SEN.MIGNON WATERMAN	✓	
	11	5

SEN:1997
wp:rlclvote.man
CS-11

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 4/9/97 BILL NO. HB 578 NUMBER

MOTION: HSTA effective date to 1999 - amend

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN		✓
SEN. LARRY BAER		
SEN. TOM BECK		✓
SEN. JIM BURNETT		✓
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS	✓	
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM		✓
SEN. KEN MILLER		✓
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR	✓	
SEN. DARYL TOEWS	✓	
SEN.MIGNON WATERMAN	✓	
	9	7

SEN:1997
wp:rlclvote.man
CS-11

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 4/9/97 BILL NO. HB578 NUMBER

MOTION: amend - strike sections 12 & 16

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN		✓
SEN. LARRY BAER		
SEN. TOM BECK	✓	
SEN. JIM BURNETT		✓
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN		✓
SEN. LOREN JENKINS	✓	
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM		✓
SEN. KEN MILLER	✓	
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR	✓	
SEN. DARYL TOEWS		✓
SEN.MIGNON WATERMAN	✓	
	9	7

SEN:1997
wp:rlclvote.man
CS-11

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 4/9/97 BILL NO. HB 518 NUMBER

MOTION: BCCAA

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN		✓
SEN. LARRY BAER		✓
SEN. TOM BECK		✓
SEN. JIM BURNETT		✓
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS	✓	
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM		✓
SEN. KEN MILLER		✓
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON		✓
SEN. MIKE TAYLOR	✓	
SEN. DARYL TOEWS		✓
SEN.MIGNON WATERMAN	✓	
	7	10

SEN:1997
wp:rlclvote.man
CS-11

DATE 4/9/97

SENATE COMMITTEE ON Finance & Claims

BILLS BEING HEARD TODAY: HB398, HB567, HB576, HB578

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Tom Schneider	MPEA	HB567	X	
Loren Smith	MSTA	HB578		X
Judy Garrity	Mt. Children's Trust Fund	HB576	X	
Rebecca Mahurin	MSTA	578		X
Shirley Brown	DPHHS-CFSD	HB576	X	
Phil Grossberg	DLI - Helena J.S.	HB567	X	
Brian McCullough	DLI	HB567	X	
Doug Coffin	McLaughlin Resident.		X	
Terry Minow	MFSE	HB567	X	
Mark Cress	Dept. of Admin'	HB567	X	
Michael Bartley	AFSCME	HB567	X	
Steve Yeakel	MT Council For Maternal & Child Health	HB576	X	
JON MARCHI	GLACIER VISIONARIES	HB578		X
JON MARCHI	MT. AMBASSADORS	HB578		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Kirk Astroth	MT Children's Trust	HB576	✓	
Steve Hutting ton	Northern Rockies Venture Fund	HB578		✓
Alan Nichols	Mt. Assn. of Counties	HB578		
Debra Fulton	Dept. of Administration	HB398	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By **CHAIRMAN CHUCK SWYSGOOD**, on April 11, 1997, at 8:04 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Larry Baer (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. James H. "Jim" Burnett (R)
Sen. B.F. "Chris" Christiaens (D)
Sen. Eve Franklin (D)
Sen. Loren Jenkins (R)
Sen. Greg Jergeson (D)
Sen. John "J.D." Lynch (D)
Sen. Dale Mahlum (R)
Sen. Ken Miller (R)
Sen. Arnie A. Mohl (R)
Sen. Linda J. Nelson (D)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)

Members Excused: None

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 615, 4/8/97
Executive Action: HB 615, BCC; HB 584, BCCAA; HB 578, BCCAA; HB 169, BCCAA; HB 17, BCC; HB 166, BCCAA; HB 610, BCCAA; HB 405 Tabled

HEARING ON HB 615

Sponsor: **REP. JOHN COBB, HD 50, AUGUSTA**

should be examined, I don't think it is appropriate to add another waiver to the list.

Vote: **THE MOTION TO ELIMINATE AMENDMENT #HB001702.A35 CARRIED 10-7 ON ROLL CALL VOTE.**

Vote: **THE MOTION THAT HB 17 BE CONCURRED IN CARRIED 9-8 ON ROLL CALL VOTE. SEN. HARGROVE** will carry HB 17.

{Tape: 1; Side: B; Approx. Time Count: 8:48; Comments: None.}

RECONSIDER ACTION ON HB 166

Motion/Vote: **SEN. LYNCH MOVES TO RECONSIDER ACTION ON CONCURRING IN HB 166. THE MOTION CARRIED UNANIMOUSLY**

EXECUTIVE ACTION ON HB 166

Motion: **SEN. LYNCH MOVES HB 166 BE CONCURRED IN.**

Amendment: Amendment #hb016608.agp. **(EXHIBIT #6)**

Motion/Vote: **SEN. LYNCH MOVES TO AMEND HB 166 WITH AMENDMENT #HB016608.AGP. THE MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. LYNCH MOVES HB 166 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.**

{Tape: 1; Side: B; Approx. Time Count: 8:50; Comments: None.}

EXECUTIVE ACTION ON HB 578

Amendment: Amendment #hb057805.agp. **(EXHIBIT #7)**

Motion: **SEN. TAYLOR MOVES TO AMEND HB 578 WITH AMENDMENT #HB057805.AGP.**

Discussion: **CHAIRMAN SWYSGOOD** The motion to pass HB 578 failed so the bill is in the form it was presented by **REP. JOHNSON.**

SEN. TAYLOR Something has to be done with this portfolio. This amendment allows the Montana Science and Technology Board (MSTA) to take some action on the $4.2 million until we make a decision. It extends the program 2 years so they are not a lame duck.

CHAIRMAN SWYSGOOD We have an important policy decision to make with this. We need to try and recoup as much of the money loaned through the MSTA as possible. This amendment allows the MSTA to move the portfolio to an appropriate place. I hope the committee will support this amendment.

SEN. KEATING I agree with the amendment as I don't think the portfolio should go to the Board of Investments because of what might happen to the income. I got the impression there is some

unexpended loan authorization, $2-3 million. I would like to have some prohibition from making new loans during this period of time.

SEN. TAYLOR If we hamstring them we're setting them up for failure and we're sending a message that they are a lame duck. I don't think we can prohibit this. They haven't made a lot of loans.

SEN. KEATING I don't know that rescinding loan authorization is hamstringing them. They still have a lot of work to do with the collection and management of the loans they've already made.

SEN. TOEWS What is the fiscal impact on this? **CHAIRMAN SWYSGOOD** $500,000.

SEN. KEN MILLER My concern is that we may be cutting off the loan possibility for a business that has put a lot of work into this. I think we need to phase this out, tell them they can't take anymore applications but we shouldn't say no more new loans.

CHAIRMAN SWYSGOOD The purpose is to let this phase out in a prudent manner.

Vote: THE MOTION TO AMEND HB 578 WITH AMENDMENT #HB057805.AGP CARRIED UNANIMOUSLY ON ROLL CALL VOTE.

Motion: SEN. LYNCH MOVES HB 578 BE CONCURRED IN AS AMENDED.

Amendment: Amendment #hb057806.agp. **(EXHIBIT #8)**

Motion: SEN. FRANKLIN MOVES TO AMEND HB 578 WITH AMENDMENT #HB057806.AGP.

Discussion: SEN. FRANKLIN They wanted to have a clearer peer review process in place for R&D. They currently use NIH ranking for peer review. If there is not enough time to deal with this today I hope that this will be discussed in 1999.

CHAIRMAN SWYSGOOD The amendment asks for them to get input from outside their internal structure for R&D loan review, is that right? **SEN. FRANKLIN** That is my belief.

SEN. KEATING Doesn't the language of this amendment presuppose new applications and loan authorizations? **SEN. FRANKLIN** Yes. **SEN. KEATING** That flies in the face of what we discussed on the previous motion.

SEN. FRANKLIN WITHDRAWS THE MOTION TO AMEND HB 578 WITH AMENDMENT #HB057806.AGP.

Discussion: SEN. FRANKLIN I'd like it to be on record that, as we go further with research and development, we develop another entity for peer review.

SEN. LYNCH Are we eliminating the board with this amendment? **CHAIRMAN SWYSGOOD** No, we are extending their sunset for 2 years. We're hoping they figure a way to get out of this and save the state the money we've invested.

Vote: **THE MOTION THAT HB 578 BE CONCURRED IN AS AMENDED CARRIED UNANIMOUSLY. SEN. TAYLOR** will carry HB 578.

{Tape: 1; Side: B; Approx. Time Count: 9:29; Comments: None.}

EXECUTIVE ACTION ON HB 169

Amendments: Amendment #hb016901.a35. **(EXHIBIT #9)**

Motion: **SEN. BECK MOVES TO AMEND HB 169 WITH AMENDMENT #HB016901.A35.**

Discussion: **Taryn Purdy, Legislative Fiscal Division (LFD)** This bill defines which funds come out of the state treasury. The primary impetus for the bill was to make statue conform to the constitution on this. This amendment takes enterprise funds and debt service fund type off the budget. **(EXHIBIT #10)** handed out.

SEN. KEATING Sometimes there is confusion between enterprise and proprietary funds and confusion between proprietary and state special funds. I have concern about that and am trying to think this amendment through to see what we are doing. **Ms. Purdy** I think your point about proprietary funds and state special is a good one as it relates to internal service type funds wherein an agency charges another agency to perform a service and gets paid for that. Enterprise funds are generally a little cleaner and have to do with those time when someone voluntarily participates in whatever the state agency is doing. Lottery and hail insurance are examples of enterprise funds.

SEN. JENKINS Would you give me an answer to this question? **Connie Griffith, Department of Administration** Proprietary funds consist of two types of funds: internal service; and enterprise. These types of funds essentially act like a business unlike state special where you may be receiving fees from other places and people but you are not trying to cover all your cost like a business covers their costs. Proprietary funds cover all operating costs including depreciation. Internal service funds are for services between agencies and within the government. The enterprise fund is when you are providing services and/or products that you are selling to outsiders, an example of this is the prison industry.

Vote: **THE MOTION TO AMEND HB 169 WITH AMENDMENT #JB016901.A35 CARRIED UNANIMOUSLY.**

{Tape: 1; Side: B; Approx. Time Count: 9:37; Comments: None.}

Amendment: Amendment #hb016904.a05. **(EXHIBIT #11)**

...NCE AND CLAIMS
EXHIBIT NO. 7
DATE 4/11/97
BILL NO. HB578

Amendments to House Bill No. 578
Third Reading Copy

Requested by Senator Taylor
For the Committee on Finance and Claims

Prepared by Greg Petesch
April 9, 1997

1. Title, line 5.
Following: "DEVELOPMENT"
Insert: "IN 1999"

2. Title, lines 7 through 9.
Following: ";" on line 7
Strike: remainder of line 7 through "REPAYMENT;" on line 9

3. Title, line 14.
Strike: "AN"
Strike: "DATE"
Insert: "DATES"

4. Page 7, line 8.
Insert: "**Section 6.** Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall allow the Montana board of science and technology development, provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. This authority does not extend beyond June 30, ~~1997~~ 1999, for seed capital project loans and beyond June 30, ~~1997~~ 1999, for research and development projects. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As seed capital and mezzanine financing loans made pursuant to this subsection are repaid, the Montana board of science and technology development may reinvest the principal in new loans.

(4) The board shall adopt rules to allow a nonprofit

corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations for for-profit corporations.""
Renumber: subsequent sections

5. Page 7, line 16.
Strike: "7"
Insert: "8"

6. Page 10, lines 24 through 30.
Strike: section 12 in its entirety
Renumber: subsequent sections

7. Page 11, line 10.
Strike: "7"
Insert: "8"

8. Page 11, line 12.
Strike: "7"
Insert: "8"

9. Page 11, lines 14 through 18.
Strike: section 16 in its entirety
Renumber: subsequent section

10. Page 11, line 20.
Strike: "**date**"
Insert: "**dates**"
Following: "."
Insert: "(1) Except as provided in subsection (2),"
Strike: "This"
Insert: "this"
Strike: "1997"
Insert: "1999"

11. Page 11, line 21.
Insert: "(2) [Section 6] is effective on passage and approval."

...NCE AND CLAIMS
EXHIBIT NO. 8
DATE 4/11/97
BILL NO. HB578

Amendments to House Bill No. 578
Third Reading Copy

Requested by Senator Franklin
For the Committee on Finance and Claims

Prepared by Greg Petesch
April 10, 1997

1. Title, line 10.
Following: "17-7-502,"
Insert: "90-3-521,"

2. Title, line 14.
Strike: "AN"
Strike: "DATE"
Insert: "DATES"

3. Page 9, line 18.
Insert: "**Section 11.** Section 90-3-521, MCA, is amended to read:
"**90-3-521. Science and technology development project loans -- board action.** (1) If the board determines that a science and technology development project meets the criteria established in this chapter and has complied with the applicable procedures and review processes established by the board, the board may enter into a science and technology development project loan agreement with the loan recipient and authorize the disbursement of funds to the loan recipient.

(2) All decisions of the board are final and not subject to the contested case provisions of Title 2, chapter 4.

(3) As part of the review processes established pursuant to subsection (1), the board shall refer investment applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for an investment should be approved.

(4) The board shall review the recommendation of the peer review group and either approve or deny an investment application. If the board approves an application, the board shall enter into an investment agreement with the recipient.""
Renumber: subsequent sections

4. Page 11, line 20.
Following: "**date**"
Insert: "**dates**"
Following: "."
Insert: "(1) Except as provided in subsection (2),"
Strike: "This"
Insert: "this"

5. Page 11, line 21.
Insert: "(2) [Section 11] is effective on passage and approval."

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE

ROLL CALL DATE 4/11/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHUCK SWYSGOOD, CHAIRMAN	✓		
SEN. TOM KEATING, VICE CHAIRMAN	✓		
SEN. LARRY BAER	✓		
SEN. TOM BECK	✓		
SEN. JIM BURNETT	✓		
SEN. B.V. "CHRIS" CHRISTIAENS	✓		
SEN. EVE FRANKLIN	✓		
SEN. LOREN JENKINS	✓		
SEN. GREG JERGESON	✓		
SEN. J. D. LYNCH	✓		
SEN. DALE MAHLUM	✓		
SEN. KEN MILLER	✓		
SEN. ARNIE MOHL	✓		
SEN. LINDA NELSON	✓		
SEN. MIKE TAYLOR	✓		
SEN. DARYL TOEWS	✓		
SEN. MIGNON WATERMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 4/11/97 BILL NO. HB 578 NUMBER hb057805.agp

MOTION: amend

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN	✓	
SEN. TOM KEATING, VICE CHAIRMAN	✓	
SEN. LARRY BAER	✓	
SEN. TOM BECK	✓	
SEN. JIM BURNETT	✓	
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS	✓	
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM	✓	
SEN. KEN MILLER	✓	
SEN. ARNIE MOHL	✓	
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR	✓	
SEN. DARYL TOEWS	✓	
SEN.MIGNON WATERMAN	✓	
	17	0

SEN:1997
wp:rlclvote.man
CS-11

SENATE STANDING COMMITTEE REPORT

April 11, 1997

MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration House Bill 578 (third reading copy -- blue), respectfully report that House Bill 578 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Chuck Swysgood, Chair

That such amendments read:

1. Title, line 5.
Following: "DEVELOPMENT"
Insert: "IN 1999"

2. Title, lines 7 through 9.
Following: ";" on line 7
Strike: remainder of line 7 through "REPAYMENT;" on line 9

3. Title, line 14.
Strike: "AN"
Strike: "DATE"
Insert: "DATES"

4. Page 7, line 8.
Insert: "**Section 6.** Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall allow the Montana board of science and technology development, provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. This authority does not extend beyond June 30, ~~1997~~

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

771416SC.SRF

1999, for seed capital project loans and beyond June 30, ~~1997~~ 1999, for research and development projects. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As seed capital and mezzanine financing loans made pursuant to this subsection are repaid, the Montana board of science and technology development may reinvest the principal in new loans.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.""
Renumber: subsequent sections

5. Page 7, line 16.
Strike: "7"
Insert: "8"

6. Page 10, lines 24 through 30.
Strike: section 12 in its entirety
Renumber: subsequent sections

7. Page 11, line 10.
Strike: "7"
Insert: "8"

8. Page 11, line 12.
Strike: "7"
Insert: "8"

9. Page 11, lines 14 through 18.
Strike: section 16 in its entirety
Renumber: subsequent section

10. Page 11, line 20.
Strike: "**date**"
Insert: "**dates**"
Following: "."
Insert: "(1) Except as provided in subsection (2),"
Strike: "This"
Insert: "this"
Strike: "1997"
Insert: "1999"

11. Page 11, line 21.
Insert: "(2) [Section 6] is effective on passage and approval."

-END-

HOUSE BILL NO. 578

INTRODUCED BY LAWSON

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT IN 1999; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE BOARD OF INVESTMENTS; REVISING THE JOB INVESTMENT LOAN LAWS; ~~APPROPRIATING COAL SEVERANCE TAX PERMANENT FUNDS TO THE OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION TO REPAY THE RESEARCH AND DEVELOPMENT LOAN; PROVIDING FOR THE DEPOSIT OF THE LOAN REPAYMENT;~~ AMENDING SECTIONS 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, AND 90-3-901, MCA; AND PROVIDING ~~AN~~ EFFECTIVE ~~DATE~~ DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-18-103, MCA, is amended to read:

"**2-18-103. Officers and employees excepted.** (1) Parts 1 and 2 do not apply to the following positions in state government:

(a) elected officials;

(b) county assessors and their chief deputy;

(c) employees of the office of consumer counsel;

(d) judges and employees of the judicial branch;

(e) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(f) officers or members of the militia;

(g) agency heads appointed by the governor;

(h) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

REFERENCE BILL
AS AMENDED

(i) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(j) teachers under the authority of the department of corrections or the department of public health and human services;

(k) investment officer, assistant investment officer, executive director, and ~~three~~ five professional staff positions of the board of investments;

(l) four professional staff positions under the board of oil and gas conservation;

(m) assistant director for security of the Montana state lottery;

~~(n) executive director and senior investment officer of the Montana board of science and technology development;~~

~~(o)~~(n) executive director and employees of the state compensation insurance fund;

~~(p)~~(o) state racing stewards employed by the executive secretary of the Montana board of horseracing;

~~(q)~~(p) executive director of the Montana wheat and barley committee;

~~(r)~~(q) commissioner of banking and financial institutions; and

~~(s)~~(r) training coordinator for county attorneys.

(2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative branch, other than the office of consumer counsel:

(a) as used in parts 1 through 3 of this chapter, references to the "department of administration" or "department" apply to the legislative council established by 5-11-101, which may delegate administrative duties to the legislative services division established by 5-11-111;

(b) as used in 2-18-102, the term "governor" applies to the legislature; and

(c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined in 17-7-102."

Section 2. Section 17-6-201, MCA, is amended to read:

"**17-6-201. Unified investment program -- general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be

administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

~~(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.~~"

Section 3. Section 17-6-302, MCA, is amended to read:

"**17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Department" means the department of commerce provided for in 2-15-1801.

~~(4)~~(5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

~~(5)~~(6) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

~~(6)~~(7) "Loan participation" means loans or portions ~~thereof~~ of loans bought from a financial institution and does not include the purchase of debentures issued by a capital company.

~~(7)~~(8) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests ~~are~~ is owned and controlled by residents of Montana.

~~(8)~~(9) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax ~~revenues~~ revenue in the future to the people of Montana, either directly or indirectly.

~~(9)~~(10) "Montana economy" means any business activity in the state of Montana, including those ~~which~~ that continue existing jobs or create new jobs in Montana.

~~(10)~~(11) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 4. Section 17-6-305, MCA, is amended to read:

"**17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy -- report by board.** (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25% of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of

the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of science and technology development and administered by the department pursuant to ~~17-6-308(3)~~ part 5 of this chapter ~~may~~ is not ~~be~~ included in the 25% of the trust fund allocated to the board for in-state investment under this section.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by 17-7-111." .

Section 5. Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall ~~allow~~ manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development~~, provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. This authority does not extend beyond June 30, 1997, for seed capital project loans and beyond June 30, 1997, for research and development projects~~. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios. Until the ~~Montana board of science and technology development~~ department makes a loan pursuant to the provisions of ~~Title 90,~~ part 5 of this chapter ~~3~~, the $2 million in

funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As ~~seed capital and mezzanine financing~~ loans made pursuant to part 5 of this ~~subsection~~ chapter are repaid, the ~~Montana board of science and technology development~~ department may reinvest the principal in new loans pursuant to part 5 of this chapter.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations."

SECTION 6. SECTION 17-6-308, MCA, IS AMENDED TO READ:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall allow the Montana board of science and technology development, provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. This authority does not extend beyond June 30, ~~1997~~ 1999, for seed capital project loans and beyond June 30, ~~1997~~ 1999, for research and development projects. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As seed capital and mezzanine financing loans made pursuant to this subsection are repaid, the Montana board of science and technology development may reinvest the principal in new loans.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit

corporations."

Section 7. Section 17-6-503, MCA, is amended to read:

"**17-6-503. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

~~(1) "Board" means the Montana board of science and technology development provided for in 2-15-1818.~~

~~(2)~~(1) "Department" means the department of commerce provided for in 2-15-1801.

(2) "Job investment administrative account" means the account established in 17-6-509.

(3) "Job investment loan account" means the account established in [section ~~7~~ 8].

~~(3)~~(4) "Loan review committee" means the committee that is established by the department to consider economic development loan applications for funding by the federal community development block grant program and that is responsible for reviewing and recommending to the ~~board~~ department the approval or denial of job investment loans subject to this part and rules implementing this part.

~~(4)~~(5) "Qualified business" means a business enterprise that either is or will be located in the state and that produces goods or provides services that will, as a result of receiving a job investment loan, create jobs for Montana workers."

NEW SECTION. **Section 8. Job investment loan account.** There is a job investment loan account. The department shall deposit all principal payments on loans made pursuant to this part in the account and may make additional loans pursuant to this part. The department shall make loans from the funds allocated to the department under 17-6-308.

Section 9. Section 17-6-509, MCA, is amended to read:

"**17-6-509. Job investment administrative account.** There is a job investment administrative account in the state special revenue fund. The department shall deposit up to 20% of interest payments on job investment loans into the account. Money in the account must be used to pay the costs of administering this part, including personnel costs, operating costs, and administrative costs. Interest payments not deposited into the account must be deposited into the coal severance tax income fund established in 17-5-703."

Section 10. Section 17-6-510, MCA, is amended to read:

"**17-6-510. Loan review committee -- conflict of interest -- servicing of loans.** (1) The department shall establish a loan review committee to administer this part. The committee shall accept and review loan applications pursuant to rules adopted by the department. The committee shall recommend to the ~~board~~ department the approval or disapproval of loans. A loan may not exceed $500,000.

(2) If a member of the committee has a financial interest in a business that submits a job investment loan application, then the application must be denied.

(3) The department ~~shall~~ may contract for the servicing of loans.

(4) The department is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into under this part."

Section 11. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; ~~80-3-301;~~

90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

Section 12. Section 90-8-201, MCA, is amended to read:

"**90-8-201. Certification of Montana capital companies -- certification of a Montana small business investment capital company.** (1) The department shall certify one Montana small business investment capital company, and from time to time, the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company or as the Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that ~~such~~ the investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company or as the qualified Montana small business investment capital company.

(5) To be eligible for certification under this section as the Montana small business investment

capital company, the applicant shall commit to:

(a) ~~utilize~~ using the tax credits to accumulate private capital with the intention of being designated a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

(b) ~~target~~ targeting its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and development, ~~the Montana board of science and technology development (second stage),~~ small business incubators, community development block grant programs, and projects emerging from economic development programs of Montana certified communities, with the objective of providing significant investment opportunities in an area where economic development capital is limited;

(c) ~~consider~~ considering investment opportunities originating in any Montana county; and

(d) ~~adopt~~ adopting investment guidelines that ensure that not less than 10% of its available capital is invested in counties with populations of 20,000 or less."

~~NEW SECTION. **Section 12. Appropriation -- loan repayment.** There is appropriated to the office of the commissioner of higher education from the coal severance tax permanent trust fund up to $9,350,000 for the purpose of repaying the research and development loan made by the Montana board of science and technology development to the university system. The appropriation must be used to repay the loan principal to the board of investments as the successor in interest to the Montana board of science and technology development. The repayment must be deposited in the coal severance tax permanent fund. The principal must be repaid within 30 days after [the effective date of this act].~~

NEW SECTION. **Section 13. Repealer.** Sections 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, and 90-3-901, MCA, are repealed.

NEW SECTION. **Section 14. Saving clause.** [This act] does not affect rights and duties that

matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 15. Codification instruction.** [Section ~~7~~ 8] is intended to be codified as an integral part of Title 17, chapter 6, part 5, and the provisions of Title 17, chapter 6, part 5, apply to [section ~~7~~ 8].

~~NEW SECTION. **Section 16. Three-fourths vote required.** Because [section 12] statutorily appropriates money from the coal severance tax trust fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage of [section 12]. If a vote of three-fourths of the members of each house is not received, then [section 12] is void.~~

NEW SECTION. **Section 16. Effective ~~date~~ DATES.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [~~This~~ THIS act] is effective July 1, ~~1997~~ 1999.

(2) [SECTION 6] IS EFFECTIVE ON PASSAGE AND APPROVAL.

-END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON HOUSE BILL 578

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on April 19, 1997, at 2:40 p.m., in Room 413. The Free Conference Committee recessed at 4:00 p.m. on April 19 and reconvened on April 23, 1997 at 10:30 a.m.

ROLL CALL

Members Present:
Sen. Gerry Devlin (R), Chair
Sen. Greg Jergeson (D)
Sen. Mike Taylor (R)
Rep. Larry Hal Grinde (R), Chair
Rep. Royal C. Johnson (R)
Rep. Bob Raney (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Code Commissioner
Marjorie Peterson, Committee Secretary

HEARING ON HB 578

Opening Statement by Chairman:
SEN. GERRY DEVLIN, SD 2, Terry, opened the Free Conference Committee hearing on HB 578, An act eliminating the Montana Board of Science and Technology Development in 1999, transferring the portfolios of the board to the board of investments, revising the job investment loan laws.
{Tape: 1; Side: A; Approx. Tape Counter: 0.1.}

Proponents:
Peter Blouke, Director, Department of Commerce, Helena.
{Tape: 1; Side: A; Approx. Tape Counter: 1.0.}

Opponents:
Rebecca McHerrin, Board Member, Board of Science and Technology, Bozeman.
{Tape: 1; Side: A; Approx. Tape Counter: 5.6.}

Will Brooke, Board Attorney, Bozeman.
{Tape: 1; Side: A; Approx. Tape Counter: 10.0.}

Laurence Smith, member of the Board, Great Falls.
{Tape: 1; Side: A; Approx. Tape Counter: 13.4.}

Questions From the Committee:
{Tape: 1; Side: A; Approx. Tape Counter: 18.5.}

EXECUTIVE ACTION ON HB 578

Motion/Vote: REP. JOHNSON moved amendment HB057808.agp Do Pass. Motion failed 3 - 3 on a roll call vote, with SENS. DEVLIN, JERGESON, and TAYLOR voting no.
{Tape: 1; Side: B; Approx. Tape Counter: 18.3.}

MOTION/VOTE: SEN. JERGESON moved amendment HB057809.AGP Do Pass. Motion failed 2 - 4 on a roll call vote, with SEN. DEVLIN, REPS. GRINDE, JOHNSON, and RANEY voting no.
{Tape: 1; Side: B; Approx. Tape Counter: 29.9.}

Committee recessed at 4:00 p.m. and reconvened on April 23, 1997 at 10:30 a.m.

Discussion:
{Tape: 2; Side: A; Approx. Tape Counter: 1.3.}

Motion/Vote: SEN. TAYLOR moved voice amendment, Subsection 2, #16, "If HB 2 is vetoed, then the interest appropriated from $2 million in research and development at MSU would be void.." Motion carried 4 - 2 on a roll call vote, with SEN. JERGESON and REP. RANEY voting no.
{Tape: 2; Side: B; Approx. Tape Counter: 1.2.}

Motion: SEN. TAYLOR moved amendment HB057815.agp Do Pass. This amendment was separated and each item was moved and voted on individually.
{Tape: 2; Side: B; Approx. Tape Counter: 8.5.}

Motion/Vote: SEN. DEVLIN moved amendment HB057815.agp #9 Do Pass. Motion failed 4 - 2 on a roll call vote, with SENS. DEVLIN and TAYLOR voting no.
{Tape: 2; Side: B; Approx. Tape Counter: 15.2.}

Motion/Vote: SEN. TAYLOR moved a voice amendment to #9 Do Pass. "The Director of the Department of Commerce will serve as a voting member of the Board." Motion failed 2 - 4 on a roll call vote, with SENS. DEVLIN and TAYLOR voting yes.
{Tape: 2; Side: B; Approx. Tape Counter: 18.0.}

Motion/Vote: SEN. JERGESON moved #8, with grant included, Do Pass. Motion failed 2 - 4 on a roll call vote, with SEN. [illegible] and REP. JOHNSON voting yes.
{Tape: 2; Side: B; Approx. Tape Counter: 19.1.}

Motion/Vote: SEN. TAYLOR moved #8 Do Pass. Motion carried unanimously.
{Tape: 2; Side: B; Approx. Tape Counter: 21.2.}

Motion/Vote: REP. GRINDE moved #7, without the words in brackets, Do Pass. Motion failed 1 - 5, with REP. GRINDE voting yes.
{Tape: 2; Side: B; Approx. Tape Counter: 22.0.}

Motion/Vote: SEN. JERGESON moved #7, bracket language only, Do Pass. Motion failed 3 - 3 on a roll call vote, with SEN. DEVLIN, REPS. GRINDE and RANEY voting no.
{Tape: 2; Side: B; Approx. Tape Counter: 26.2.}

Motion/Vote: REP. JOHNSON moved #6 Do Pass. REP. JOHNSON submitted a Table showing total cash and projected revenue from 1997 through 1999. EXHIBIT 1. Motion that #6 Do Pass carried unanimously.
{Tape: 2; Side: B; Approx. Tape Counter: 33.5.}

Motion/Vote: REP. JOHNSON moved #5 Do Pass. Motion carried unanimously.
{Tape: 2; Side: B; Approx. Tape Counter: 41.7.}

Motion/Vote: REP. JOHNSON moved #4 Do Pass. Motion carried unanimously.
{Tape: 2; Side: B; Approx. Tape Counter: 44.5.}

Motion/Vote: REP. JOHNSON moved #3 Do Pass. Motion carried unanimously.
{Tape: 2; Side: B; Approx. Tape Counter: 45.1.}

Motion/Vote: SEN. TAYLOR moved #10 Do Pass. Motion carried unanimously.
{Tape: 3; Side: A; Approx. Tape Counter: 0.1.}

Motion/Vote: SEN. TAYLOR moved #9 voice amendment with the language "...unless the board overrode the Director by 2/3 vote.." Do Pass. Motion failed 3 - 3 on a roll call vote, with REPS. GRINDE, JOHNSON, and RANEY voting no.
{Tape: 3; Side: A; Approx. Tape Counter: 6.6.}

Motion/Vote: REP. GRINDE moved #9 amendment without the language in brackets Do Pass. Motion failed 3 - 3 on a roll call vote, with SENS. DEVLIN, JERGESON, and TAYLOR voting no.
{Tape: 3; Side: A; Approx. Tape Counter: 9.3.}

Motion/Vote: SEN. TAYLOR moved amendment on Page 7, lines 4 and 24 Do Pass. Motion carried 5 - 1 on a roll call vote, with REP. RANEY voting no.
{Tape: 3; Side: A; Approx. Tape Counter: 19.6.}

Motion/Vote: REP. JOHNSON moved #3 Do Pass. Motion failed 2 - 4 on a roll call vote, with SEN. JERGESON and REP. JOHNSON voting yes.
{Tape: 3; Side: A; Approx. Tape Counter: 31.6.}

Motion/Vote: SEN. TAYLOR moved #3 Do Pass with REP. GRINDE's voice amendment that there must be at least seven people to override the Director's veto. Motion failed 4 - 2 on a roll call vote, with REPS. JOHNSON and RANEY voting no.
{Tape: 3; Side: B; Approx. Tape Counter: 10.9.}

Motion/Vote: SEN. TAYLOR moved #3 Do Pass with REP. GRINDE's voice amendment that a member of the board appointed may not be an officer or an employee of an entity that has received funding from the board. Motion carried 4 - 2 on a roll call vote, with SEN. DEVLIN and REP. RANEY voting no.
{Tape: 4; Side: A; Approx. Tape Counter: 25.2.}

Motion/Vote: REP. JOHNSON moved #11, 12, 13, 14, 15, and 17 Do Pass. Motion carried unanimously.
{Tape: 4; Side: A; Approx. Tape Counter: 28.9.}

Motion/Vote: REP. JOHNSON moved #1 and 2 Do Pass. Motion carried unanimously.
{Tape: 4; Side: A; Approx. Tape Counter: 31.3.}

Motion/Vote: REP. JOHNSON moved HB 578 Do Pass As Amended. Motion carried 5 - 1 on a roll call vote, with REP. RANEY voting no.
{Tape: 4; Side: A; Approx. Tape Counter: 32.3.}

ADJOURNMENT

Adjournment: 5:00 p.m.

Sen Devlin

SEN. GERRY DEVLIN, Chairman

Marjorie Peterson

MARJORIE PETERSON, Secretary

GD/mp

FREE CONFERENCE COMMITTEE

on House Bill 578
Report No. 1, April 23, 1997

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 578** (reference copy -- salmon) and recommend that **House Bill 578** be amended as follows:

1. Title, line 6.
Strike: "BOARD OF INVESTMENTS"
Insert: "DEPARTMENT OF COMMERCE"

2. Title, line 9.
Following: "~~REPAYMENT;~~"
Insert: "REVISING THE CONDITIONS FOR MEMBERSHIP ON THE BOARD; TRANSFERRING A PORTION OF THE INTEREST EARNINGS TO THE SUPREME COURT TO FUND JUDGES' RETIREMENT; AUTHORIZING A GRANT OF INTEREST EARNINGS TO THE UNIVERSITY SYSTEM;"

3. Title, line 10.
Following: line 9
Insert: "2-15-1818,"

4. Title, line 14.
Following: "DATES"
Insert: "AND A RETROACTIVE APPLICABILITY DATE"

5. Page 1, line 17.
Insert: "**Section 1.** Section 2-15-1818, MCA, is amended to read:
"**2-15-1818. Montana board of science and technology development -- allocation -- composition -- quasi-judicial powers.** (1) There is a Montana board of science and technology development. The board is allocated to the department of commerce. The department shall select, prescribe the duties for, and supervise staff to administer board activities.
(2) The board consists of nine members appointed by the governor as prescribed in 2-15-124.
(3) In making appointments to the board, the governor shall consider people with extensive interest and experience in science and technology and the application of such interest and

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REJECT

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HB 578

experience to economic development in Montana.

(4) The membership of the board must include:

(a) at least three members with knowledge of early stage financing of private businesses;

(b) at least one member with expertise in applied technology development; and

(c) at least five members from the private sector.

(5) The board is designated a quasi-judicial board for purposes of 2-15-124.

(6) A member of the board appointed after [the effective date of this section] may not be an officer or an employee of an entity that has received funding from the board.""

Renumber: subsequent sections

6. Page 6, line 3.
Strike: "not"

7. Page 6, line 21.
Strike: "board"
Insert: "department"

8. Page 6, line 27.
Following: line 26
Insert: "The department shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The department shall report the schedule to the 56th legislature. The department shall develop a business investment strategy for investing in Montana business and shall present the proposal to the 56th legislature."
Strike: "board" on line 27
Insert: "department"

9. Page 6, line 30.
Strike: "$2 million"
Insert: "$915,000"

10. Page 7, line 8.
Following: line 7
Insert: "(5) Beginning July 1, 1999, all repayments proceeds in excess of $4.395 million must be deposited in the coal severance tax permanent fund. In the fiscal year ending June 30, 1998, the department shall transfer $250,000 from the interest and earnings from job investment loans to the Montana supreme court to be used to fund the judges' retirement system."

11. Page 7, line 22.
Following: "."
Insert: "[The board may grant up to $2 million of interest and income from investments to research and development projects at Montana public universities. The research and development projects may include grant matching fund purposes.]"

12. Page 7, line 24.
Following: "."
Insert: "Except for $915,000, all uncommitted seed capital funds must revert to the coal severance tax permanent fund. The department may use up to $75,000 each year of the seed capital funds for administrative purposes. The board of science and technology development, with the concurrence of the director of the department, may extend an additional loan to an existing seed capital portfolio company by up to $700,000. In the fiscal year ending June 30, 1998, the department shall transfer $250,000 of interest and earnings to the Montana Supreme Court to be used to fund the judges' retirement system."

13. Page 7, lines 27 and 28.
Following: "repaid," on line 27
Strike: remainder of line 27 through "loans" on line 28
Insert: "the proceeds of the seed capital portion of the Montana board of science and technology development loans must be deposited in the coal severance tax permanent fund until all loans have been repaid plus the amount of 7% simple interest for the years that the loans have been outstanding. The board shall calculate the amount of the interest charge. The board may use up to $25,000 of the repayments for administrative costs in the fiscal year ending June 30, 1997"

14. Page 8, line 10.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

15. Page 8, lines 19 through 22.
Strike: section 8 in its entirety
Renumber: subsequent sections

16. Page 8, line lines 26 through 28.
Following: "." on line 26
Strike: remainder of line 26 through "." on line 28

17. Page 8, line 29.
Strike: "not deposited into the account"

18. Page 12, lines 4 through 6.
Strike: section 15 in its entirety
Renumber: subsequent section

19. Page 12, line 13.
Insert: "NEW SECTION. **Section 15. Coordination instruction.**
(1) If House Bill No. 2 is vetoed, then the bracketed language in [section 7] is void.
(2) If the bracketed language in [section 7] is effective, then the $1 million for each fiscal year appropriated from the state special revenue account for university system research contained in House Bill No. 2 is void."
Renumber: subsequent section

20. Page 12, line 16.
Strike: "SECTION 6"
Insert: "Sections 1, 6(5), and 7"
Strike: "IS"
Insert: "are"
Following: "APPROVAL"
Insert: ", and [section 7] applies retroactively, within the meaning of 1-2-109, to investment payments received on or after April 1, 1997"

And this FREE Conference Committee report be adopted.

For the House:

LARRY GRINDE
Representative Grinde, Chair

Representative R. Johnson

Representative Raney AHR-NO

For the Senate:

Senator Devlin, Chair

Senator Taylor

Senator Jergeson

HOUSE BILL NO. 578

INTRODUCED BY LAWSON

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT IN 1999; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE ~~BOARD OF INVESTMENTS~~ DEPARTMENT OF COMMERCE; REVISING THE JOB INVESTMENT LOAN LAWS; ~~APPROPRIATING COAL SEVERANCE TAX PERMANENT FUNDS TO THE OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION TO REPAY THE RESEARCH AND DEVELOPMENT LOAN; PROVIDING FOR THE DEPOSIT OF THE LOAN REPAYMENT;~~ REVISING THE CONDITIONS FOR MEMBERSHIP ON THE BOARD; TRANSFERRING A PORTION OF THE INTEREST EARNINGS TO THE SUPREME COURT TO FUND JUDGES' RETIREMENT; AUTHORIZING A GRANT OF INTEREST EARNINGS TO THE UNIVERSITY SYSTEM; AMENDING SECTIONS 2-15-1818, 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, AND 90-3-901, MCA; AND PROVIDING ~~AN~~ EFFECTIVE ~~DATE~~ DATES AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 2-15-1818, MCA, IS AMENDED TO READ:

"2-15-1818. Montana board of science and technology development -- allocation -- composition -- quasi-judicial powers. (1) There is a Montana board of science and technology development. The board is allocated to the department of commerce. The department shall select, prescribe the duties for, and supervise staff to administer board activities.

(2) The board consists of nine members appointed by the governor as prescribed in 2-15-124.

(3) In making appointments to the board, the governor shall consider people with extensive interest and experience in science and technology and the application of such interest and experience to economic development in Montana.

(4) The membership of the board must include:

REFERENCE BILL: INCLUDES FREE CONFERENCE COMMITTEE REPORT DATED 4-23-97

(a) at least three members with knowledge of early stage financing of private businesses;

(b) at least one member with expertise in applied technology development; and

(c) at least five members from the private sector.

(5) The board is designated a quasi-judicial board for purposes of 2-15-124.

(6) A member of the board appointed after [the effective date of this section] may not be an officer or an employee of an entity that has received funding from the board."

Section 2. Section 2-18-103, MCA, is amended to read:

"**2-18-103. Officers and employees excepted.** (1) Parts 1 and 2 do not apply to the following positions in state government:

(a) elected officials;

(b) county assessors and their chief deputy;

(c) employees of the office of consumer counsel;

(d) judges and employees of the judicial branch;

(e) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(f) officers or members of the militia;

(g) agency heads appointed by the governor;

(h) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(i) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(j) teachers under the authority of the department of corrections or the department of public health and human services;

(k) investment officer, assistant investment officer, executive director, and ~~three~~ five professional staff positions of the board of investments;

(l) four professional staff positions under the board of oil and gas conservation;

(m) assistant director for security of the Montana state lottery;

~~(n) executive director and senior investment officer of the Montana board of science and~~

~~technology development;~~

~~(o)~~(n) executive director and employees of the state compensation insurance fund;

~~(p)~~(o) state racing stewards employed by the executive secretary of the Montana board of horseracing;

~~(q)~~(p) executive director of the Montana wheat and barley committee;

~~(r)~~(q) commissioner of banking and financial institutions; and

~~(s)~~(r) training coordinator for county attorneys.

(2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative branch, other than the office of consumer counsel:

(a) as used in parts 1 through 3 of this chapter, references to the "department of administration" or "department" apply to the legislative council established by 5-11-101, which may delegate administrative duties to the legislative services division established by 5-11-111;

(b) as used in 2-18-102, the term "governor" applies to the legislature; and

(c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined in 17-7-102."

Section 3. Section 17-6-201, MCA, is amended to read:

"**17-6-201. Unified investment program -- general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the

property;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

~~(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.~~"

Section 4. Section 17-6-302, MCA, is amended to read:

"**17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Department" means the department of commerce provided for in 2-15-1801.

~~(4)~~(5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

~~(5)~~(6) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter

4.

~~(6)~~(7) "Loan participation" means loans or portions ~~thereof~~ of loans bought from a financial institution and does not include the purchase of debentures issued by a capital company.

~~(7)~~(8) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests ~~are~~ is owned and controlled by residents of Montana.

~~(8)~~(9) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax ~~revenues~~ revenue in the future to the people of Montana, either directly or indirectly.

~~(9)~~(10) "Montana economy" means any business activity in the state of Montana, including those ~~which~~ that continue existing jobs or create new jobs in Montana.

~~(10)~~(11) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 5. Section 17-6-305, MCA, is amended to read:

"**17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy -- report by board.** (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25% of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of science and technology development and administered by the department pursuant to ~~17-6-308(3)~~ part 5 of this chapter ~~may~~ is ~~not be~~ included in the 25% of the trust fund allocated to the board for in-state investment under this section.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by 17-7-111."

Section 6. Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The ~~board~~ DEPARTMENT shall ~~allow~~ manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development~~, provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. This authority does not extend beyond June 30, 1997, for seed capital project loans and beyond June 30, 1997, for research and development projects~~. THE DEPARTMENT SHALL ESTABLISH AN APPROPRIATE REPAYMENT SCHEDULE FOR ALL OUTSTANDING RESEARCH AND DEVELOPMENT LOANS MADE TO THE UNIVERSITY SYSTEM. THE DEPARTMENT SHALL REPORT THE SCHEDULE TO THE 56TH LEGISLATURE. THE DEPARTMENT SHALL DEVELOP A BUSINESS INVESTMENT STRATEGY FOR INVESTING IN MONTANA BUSINESS AND SHALL PRESENT THE PROPOSAL TO THE 56TH LEGISLATURE. The ~~board~~ DEPARTMENT is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios. Until the ~~Montana board of science and technology development~~ department makes a loan pursuant to the provisions of ~~Title 90,~~ part 5 of this chapter ~~3~~, the ~~$2 million~~ $915,000 in funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As ~~seed capital and mezzanine financing~~ loans made pursuant to part 5 of this ~~subsection~~ chapter are repaid, the ~~Montana board of science and technology development~~ department may reinvest the principal in new loans pursuant to part 5 of this chapter.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance.

The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(5) BEGINNING JULY 1, 1999, ALL REPAYMENTS PROCEEDS IN EXCESS OF $4.395 MILLION MUST BE DEPOSITED IN THE COAL SEVERANCE TAX PERMANENT FUND. IN THE FISCAL YEAR ENDING JUNE 30, 1998, THE DEPARTMENT SHALL TRANSFER $250,000 FROM THE INTEREST AND EARNINGS FROM JOB INVESTMENT LOANS TO THE MONTANA SUPREME COURT TO BE USED TO FUND THE JUDGES' RETIREMENT SYSTEM."

SECTION 7. SECTION 17-6-308, MCA, IS AMENDED TO READ:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall allow the Montana board of science and technology development, provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. [THE BOARD MAY GRANT UP TO $2 MILLION OF INTEREST AND INCOME FROM INVESTMENTS TO RESEARCH AND DEVELOPMENT PROJECTS AT MONTANA PUBLIC UNIVERSITIES. THE RESEARCH AND DEVELOPMENT PROJECTS MAY INCLUDE GRANT MATCHING FUND PURPOSES.] This authority does not extend beyond June 30, ~~1997~~ 1999, for seed capital project loans and beyond June 30, ~~1997~~ 1999, for research and development projects. EXCEPT FOR $915,000, ALL UNCOMMITTED SEED CAPITAL FUNDS MUST REVERT TO THE COAL SEVERANCE TAX PERMANENT FUND. THE DEPARTMENT MAY USE UP TO $75,000 EACH YEAR OF THE SEED CAPITAL FUNDS FOR ADMINISTRATIVE PURPOSES. THE BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT, WITH THE CONCURRENCE OF THE DIRECTOR OF THE DEPARTMENT,

MAY EXTEND AN ADDITIONAL LOAN TO AN EXISTING SEED CAPITAL PORTFOLIO COMPANY BY UP TO $700,000. IN THE FISCAL YEAR ENDING JUNE 30, 1998, THE DEPARTMENT SHALL TRANSFER $250,000 OF INTEREST AND EARNINGS TO THE MONTANA SUPREME COURT TO BE USED TO FUND THE JUDGES' RETIREMENT SYSTEM. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As seed capital and mezzanine financing loans made pursuant to this subsection are repaid, ~~the Montana board of science and technology development may reinvest the principal in new loans~~ THE PROCEEDS OF THE SEED CAPITAL PORTION OF THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT LOANS MUST BE DEPOSITED IN THE COAL SEVERANCE TAX PERMANENT FUND UNTIL ALL LOANS HAVE BEEN REPAID PLUS THE AMOUNT OF 7% SIMPLE INTEREST FOR THE YEARS THAT THE LOANS HAVE BEEN OUTSTANDING. THE BOARD SHALL CALCULATE THE AMOUNT OF THE INTEREST CHARGE. THE BOARD MAY USE UP TO $25,000 OF THE REPAYMENTS FOR ADMINISTRATIVE COSTS IN THE FISCAL YEAR ENDING JUNE 30, 1997.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations."

Section 8. Section 17-6-503, MCA, is amended to read:

"**17-6-503. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

~~(1) "Board" means the Montana board of science and technology development provided for in 2-15-1818.~~

~~(2)~~(1) "Department" means the department of commerce provided for in 2-15-1801.

(2) "Job investment administrative account" means the account established in 17-6-509.

~~(3) "Job investment loan account" means the account established in [section 7-8].~~

~~(3)(4)~~(3) "Loan review committee" means the committee that is established by the department to consider economic development loan applications for funding by the federal community development block grant program and that is responsible for reviewing and recommending to the ~~board~~ department the approval or denial of job investment loans subject to this part and rules implementing this part.

~~(4)(5)~~(4) "Qualified business" means a business enterprise that either is or will be located in the state and that produces goods or provides services that will, as a result of receiving a job investment loan, create jobs for Montana workers."

~~NEW SECTION. **Section 8. Job investment loan account.** There is a job investment loan account. The department shall deposit all principal payments on loans made pursuant to this part in the account and may make additional loans pursuant to this part. The department shall make loans from the funds allocated to the department under 17-6-308.~~

Section 9. Section 17-6-509, MCA, is amended to read:

"**17-6-509. Job investment administrative account.** There is a job investment administrative account in the state special revenue fund. ~~The department shall deposit up to 20% of interest payments on job investment loans into the account. Money in the account must be used to pay the costs of administering this part, including personnel costs, operating costs, and administrative costs.~~ Interest payments ~~not deposited into the account~~ must be deposited into the coal severance tax income fund established in 17-5-703."

Section 10. Section 17-6-510, MCA, is amended to read:

"**17-6-510. Loan review committee -- conflict of interest -- servicing of loans.** (1) The department shall establish a loan review committee to administer this part. The committee shall accept and review loan applications pursuant to rules adopted by the department. The committee shall recommend to the ~~board~~ department the approval or disapproval of loans. A loan may not exceed $500,000.

(2) If a member of the committee has a financial interest in a business that submits a job investment loan application, then the application must be denied.

(3) The department ~~shall~~ may contract for the servicing of loans.

(4) The department is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into under this part."

Section 11. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory

appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; ~~90-3-301;~~ 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

Section 12. Section 90-8-201, MCA, is amended to read:

"**90-8-201. Certification of Montana capital companies -- certification of a Montana small business**

investment capital company. (1) The department shall certify one Montana small business investment capital company, and from time to time, the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company or as the Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that ~~such~~ the investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company or as the qualified Montana small business investment capital company.

(5) To be eligible for certification under this section as the Montana small business investment capital company, the applicant shall commit to:

(a) ~~utilize~~ using the tax credits to accumulate private capital with the intention of being designated a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

(b) ~~target~~ targeting its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and development, ~~the Montana board of science and technology development (second stage),~~ small business incubators, community development block grant programs, and projects emerging from economic development programs of Montana certified communities, with the objective of providing significant investment opportunities in an area where economic development capital is limited;

(c) ~~consider~~ considering investment opportunities originating in any Montana county; and

(d) ~~adopt~~ adopting investment guidelines that ensure that not less than 10% of its available capital is invested in counties with populations of 20,000 or less."

~~NEW SECTION. **Section 12. Appropriation -- loan repayment.** There is appropriated to the office of the commissioner of higher education from the coal severance tax permanent trust fund up to $9,350,000 for the purpose of repaying the research and development loan made by the Montana board of science and technology development to the university system. The appropriation must be used to repay the loan principal to the board of investments as the successor in interest to the Montana board of science and technology development. The repayment must be deposited in the coal severance tax permanent fund. The principal must be repaid within 30 days after [the effective date of this act].~~

NEW SECTION. **Section 13. Repealer.** Sections 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, and 90-3-901, MCA, are repealed.

NEW SECTION. **Section 14. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

~~NEW SECTION. **Section 15. Codification instruction.** [Section 7 8] is intended to be codified as an integral part of Title 17, chapter 6, part 5, and the provisions of Title 17, chapter 6, part 5, apply to [section 7 8].~~

~~NEW SECTION. **Section 16. Three-fourths vote required.** Because [section 12] statutorily appropriates money from the coal severance tax trust fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage of [section 12]. If a vote of three-fourths of the members of each house is not received, then [section 12] is void.~~

NEW SECTION. **SECTION 15. COORDINATION INSTRUCTION.** (1) IF HOUSE BILL NO. 2 IS VETOED, THEN THE BRACKETED LANGUAGE IN [SECTION 7] IS VOID.

(2) IF THE BRACKETED LANGUAGE IN [SECTION 7] IS EFFECTIVE, THEN THE $1 MILLION FOR EACH FISCAL YEAR APPROPRIATED FROM THE STATE SPECIAL REVENUE ACCOUNT FOR UNIVERSITY SYSTEM RESEARCH CONTAINED IN HOUSE BILL NO. 2 IS VOID.

NEW SECTION. **Section 16. Effective ~~date~~ DATES.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [~~This~~ THIS act] is effective July 1, ~~1997~~ 1999.

(2) [~~SECTION 6~~ SECTIONS 1, 6(5), AND 7] ~~IS~~ ARE EFFECTIVE ON PASSAGE AND APPROVAL, AND [SECTION 7] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO INVESTMENT PAYMENTS RECEIVED ON OR AFTER APRIL 1, 1997.

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